

# Exhibit “B”

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

GULFSIDE CASINO PARTNERSHIP

PLAINTIFF

VS.

CASE NO.

2401-2020-460

WESTCHESTER SURPLUS LINES INSURANCE  
COMPANY

DEFENDANT

SUMMONS

STATE OF MISSISSIPPI

TO: Westchester Surplus Lines Insurance Company  
by and through it designated person,  
Mr. Paul Bech, Associate General Counsel  
Chubb  
Philadelphia, PA 19106-3703

NOTICE TO DEFENDANT

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND  
YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand deliver a copy of a written response to the Complaint to Joe Sam Owen, the attorney for the Plaintiff, whose mailing address is Post Office Drawer 420, Gulfport, Mississippi, 39502, and whose physical address is 1414 25th Avenue, Gulfport, Mississippi 39501. Your responses must be mailed or delivered within thirty (30) days from the date of delivery of this Summons and Complaint or a judgment of default will be entered against you for the money or other things demanded in the Complaint.

You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

ISSUED UNDER MY HAND AND SEAL, this 24 day of September, 2020.

CLERK OF CIRCUIT COURT,  
HARRISON COUNTY, MISSISSIPPI

BY:

Kateyann McChesney  
DEPUTY CLERK



**PROOF OF SERVICE - SUMMONS**

Name of Person or Entity Served: WESTCHESTER SURPLUS LINES INSURANCE COMPANY

I, the undersigned process server, served the Summons and Complaint upon the person or entity named above in the manner set forth below (process server must check proper space and provide all additional information that is requested and pertinent to the mode of service used):

\_\_\_\_\_ FIRST CLASS MAIL AND ACKNOWLEDGMENT SERVICE. By mailing (first class mail, postage prepaid) copies to the person served, together with copies of the form of notice and acknowledgment and return envelope, postage prepaid, addressed to the sender (Attach complete acknowledgment of receipt pursuant to MRCP Form 1B).

\_\_\_\_\_ PERSONAL SERVICE. I personally delivered copies to \_\_\_\_\_  
\_\_\_\_\_ (title) of \*, registered agent for service of process for \* on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, where I found said person in \_\_\_\_\_ County of the State of \_\_\_\_\_.

\_\_\_\_\_ RESIDENCE SERVICE. After exercising reasonable diligence I was unable to deliver copies to said person within \_\_\_\_\_ County (state). I served this summons and Motion on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, at the usual place of abode of said person by leaving a true copy of the Summons and Motion with \_\_\_\_\_ (here insert wife, husband, son, daughter or other person as the case may be), a member of the family of the person served above the age of sixteen years and willing to receive the Summons and Motion, and thereafter on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, I mailed (by first class mail, postage prepaid) copies to the person served at his or her usual place abode where the copies were left.

\_\_\_\_\_ CERTIFIED MAIL SERVICE. By mailing to an address outside Mississippi (by first class, mail, postage prepaid, requiring a return receipt) copies to the person served. (Attach signed return receipt or other evidence of actual delivery to the person served.)

At the time of service I was at least 18 years of age and not a party to this action.

Fee for service: \$ \_\_\_\_\_

Process server must list below: {Please print or type}

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Personally appeared before me the undersigned authority in and for the state and county aforesaid, the with named \_\_\_\_\_ who being first by me duly sworn states on oath that the matters and facts set forth in the foregoing "Proof of Service-Summons" are true and correct as therein stated.

\_\_\_\_\_  
Process Server (Signature)

Sworn to and subscribed before me this the \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
NOTARY PUBLIC

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

BY:   
KAITLYN LADNER  
CIRCUIT CLERK  
D.C.

SEP 24 2020

GULFSIDE CASINO PARTNERSHIP

PLAINTIFF

VS.

CASE NO. A7401-2020-460

WESTCHESTER SURPLUS LINES INSURANCE  
COMPANY

DEFENDANT

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COMPLAINT  
(JURY TRIAL DEMANDED)

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Plaintiff, Gulfside Casino Partnership, files this Complaint against the Defendant named herein and in support would show:

PARTIES

1. Gulfside Casino Partnership ("GCP") is a Mississippi general partnership organized under the laws of the state of Mississippi with its principal place of business located at 3300 W. Beach Blvd., Gulfport, Mississippi 39501. GCP's general partners are Gulfside Casino, Inc. ("GCI") and Copa Casino of Mississippi, LLC ("CCM"). GCP is doing business as Island View Casino Resort. The members of CCM are residents of the states of Mississippi and Texas. GCI is a Mississippi corporate entity with its principal, and only corporate office, in Gulfport, Harrison County, Mississippi.



2. Westchester Surplus Lines Insurance Company (“Westchester”) is a foreign corporation with its principal place of business and home office located at 500 Colonial Center Parkway, Suite 200, Roswell, Georgia 30076. Westchester is not a licensed insurance company in the state of Mississippi but is authorized to do business in the state of Mississippi. Westchester issues various policies of insurance in the state of Mississippi including the subject participation policy. Westchester may be served with process by service through its designated service agent. Paul Bech, Esquire, Associate General Counsel, Chubb, 436 Walnut Street, Philadelphia, PA. 19106-3703.

3. At all material times alleged, Westchester issued the subject insurance contract (policy) to GCP, a resident of the state of Mississippi. Westchester made a contract (policy) with GCP to be performed in whole or in part in this state. Further, Westchester committed a tort in whole or in part in this state against GCP as contemplated by Miss. Code Ann. §13-3-57.

### JURISDICTION AND VENUE

4. This Court has proper subject matter and *in personam* jurisdiction. Venue is proper in the First Judicial District of Harrison County, Mississippi.

### FACTS

5. On or about May 1, 2019, the effective date of coverage, Westchester issued a surplus lines participation policy to GCP. By Endorsement No. 1 (“Endorsement”) effective May 1, 2019, Westchester, Lloyd’s, Interstate Fire, Axis, Starr, Everest, Allied, Endurance, Underwriters at Lloyd and Independent Specialty, as participating companies, agreed to pay on behalf of GCP the amount recoverable in accordance with

the terms and conditions of the Participation Policy and Endorsement, not to exceed the participation maximum articulated in the Endorsement. For ease of reference, the Endorsement Participants, including Westchester, will be referred to collectively or singularly as "EP." A copy of the Westchester Participation Policy, including Endorsement No. 1 ("Policy"), is attached hereto as Exhibit A.

6. Westchester and the other EP charged a premium for surplus lines coverage in the amount of \$3,624,199.00. GCP paid the full amount of the premium and at the time of the acts and occurrences complained of herein, the Participation Policy and Endorsement No. 1 were in full force and effect.

7. Westchester and the other EP agreed to participate in Cancellation Coverage with a Ten (\$10,000,000.00) Million Dollar sublimit. The Policy language provides as follows:

*"This policy is extended to insure the Time Element loss incurred by an Insured resulting from the cancellation of, and/or inability to accept bookings or reservations for accommodations, receive admissions, and/or interference with the business at any insured Location all as a result of the Occurrence of the following whether or not physical damage occurs to the property of the Insured or regardless of whether caused by or resulting from loss, damage or destruction from a covered cause of loss:*

*(c) a contagious or infectious disease at an insured Location, as determined by a public or civil authority, that affects persons or premises;*

\*\*\*

*(e) any of the following that occur within a radius of 15 miles of an insured Location, to the extent such Time Element loss is not otherwise insured elsewhere in this Policy;*

*(1) Outbreak of a contagious and/or infectious disease as determined by a public or civil authority;*

\*\*\*

*(f) closing in whole or in part of an insured Location either by the Insured or by a civil authority due to the existence or threat of hazardous conditions either actual or suspected at an insured Location;*

\*\*\*

*Coverage in this provision shall not conflict or reduce coverage provided elsewhere in this policy.*

### HISTORICAL BACKGROUND OF COVID-19

8. On January 21, 2020, the World Health Organization began issuing daily “situation reports” on the status of the 2019-nCoV.

9. On March 11, 2020, the World Health Organization declared 2019-nCoV a pandemic.

10. On March 15, 2020 the Mississippi Department of Health reported four new cases bringing the total to 10 cases in the state. Schools were ordered closed until March 20, 2020. The schools remained closed for the remainder of the 2019-2020 calendar school year.

### CLOSURE ORDER / COVERAGE TRIGGERED

11. On March 16, 2020, the Mississippi Gaming Commission (“Commission”) ordered the closure of the twenty-six (26) casinos operating in the state of Mississippi, including GCP doing business as Island View Casino Resort in the First Judicial District of Harrison County Mississippi (also referred to as Location”). At that time, GCP employed approximately 1,800 citizens.

12. Immediately following the Commission's order, GCP was unable to accept bookings or reservations for accommodations, receive admissions, and/or conduct its business at its insured Location caused by the outbreak of a contagious and/or infectious disease as determined by a public or civil authority within a 15 mile radius of an insured Location. Further, GCP was unable to accept bookings or reservations for accommodations, receive admissions, and/or conduct its business at its insured Location which involved the closing in whole or in part of an insured Location either by the Insured or by a civil authority due to the existence or threat of hazardous conditions either actual or suspected at an insured Location.

13. GCP immediately reported the matter to its insurance agent, BancorpSouth Insurance Services (BXSI). At all material times, BXSI was acting as an agent for GCP and EP. On April 29, 2020 an adjuster with Crawford Global Technical Services ("Crawford"), the assigned adjuster under the Policy, contacted GCP to acknowledge receipt of the claim on behalf of the EP. Crawford provided GCP with a written request for information.

14. On May 4, 2020, GCP provided Crawford a detailed response to its request for information, including its estimated loss of net revenue in the amount of \$46,228,293.00 for the three-month period from March – May 2020.

15. On May 7, 2020, GCP and Crawford scheduled a phone conference and discussed the information GCP provided on May 4, 2020.

16. On May 16, 2020, GCP provided Crawford with the supplemental information requested as well as a copy of the Mississippi Gaming Commission's Order

Authorizing Reopening that the Mississippi Gaming Commission (MGC) issued the same day. GCP also provided the MGC guidelines limiting GCP's operations.

17. On May 21, 2020, GCP was permitted to reopen its doors for business subject to the MGC restrictions and guidelines.

18. On July 8, 2020 Crawford Global transmitted a Reservation of Rights ("RR") letter together with various directives and postulations about coverages, defenses and exclusions. The RR letter was a shot fired across the bow by Westchester and the other EP that the claim may be denied, or the claim investigation will continue indefinitely notwithstanding the ongoing financial hardship GCP was enduring. A copy of the RR letter is attached hereto as Exhibit B.

19. Within five days, GCP transmitted its demand letter to Crawford which as of the filing of the Complaint is reposed in the stale files of Crawford and the EP. A copy of the demand letter is attached hereto as Exhibit C. On September 10, 2020, GCP sent a letter to Crawford as a follow-up to the GCP demand, its damages and addressed the failure of Crawford to respond to the demand. A copy of the letter is attached hereto as Exhibit D. Thereafter, GCP received a letter from Crawford advising that Everest Indemnity is not an Endorsement Participant on the Cancellation Coverage. Crawford did not address GCP's demand for policy limits on behalf of Westchester and the other EP.

20. GCP institutes this action to recover contract amounts due under the Participation Policy, to seek recovery under other causes of action together with all



damages it suffered and continues to suffer as a proximate result of the willful breach of contract which rises to the level of an intentional, independent tort.

COUNT I

DELAY/BREACH OF CONTRACT

21. GCP adopts and realleges each allegation set forth in the previous paragraphs to Count I.

22. At a material times the subject Policy and the Endorsement No. 1 were in full force and effect and all premiums due have been paid. GCP fully complied with its contractual obligations under the Policy, although it is now clear that Westchester and the other EP's had no intention from the outset of complying with the Policy payment obligations as evident from the sixteen (16) page RR letter.

23. The delay actions constitute a breach of contract (policy) under the terms of the Policy. The Policy creates an implied duty on the part of Westchester and the other EP to act in good faith and to deal fairly with GCP in accord with industry standards and in accord with Mississippi law in investigating, adjusting and timely paying any claim or loss submitted by GCP. This never occurred.

24. Mississippi leaders are reopening businesses under strict guidelines that will limit occupancy, require social distancing, and otherwise restrict operations. These guidelines will further require property owners to sanitize and deep-clean facilities as well as implement other protective measures. These guidelines are expected to limit GCP's business income and cause GCP to incur extra expense.

25. GCP has furnished the required financial information to Crawford. Crawford never requested a completed Proof of Loss from GCP and never sought to obtain statements under oath as provided for in the Policy. Westchester and Crawford simply refused to fully adjust this claim in good faith and has wrongfully withheld payment of the amounts due under the Policy forcing GCP to institute suit.

26. GCP is entitled to recover all amounts due under the Policy.

## COUNT II

### TORTIOUS DELAY/ BREACH OF CONTRACT- INTENTIONAL TORT

27. GCP adopts and realleges each allegation set forth in Count I and the previous paragraphs to Count I.

28. After receiving and accepting the premium from GCP, Westchester on behalf of the EP wrongfully refused to fully investigate, evaluate, properly adjust and pay GCP's claim, all in violation of Mississippi law and in contravention of the clear terms of the Policy. Properly adjusting a claim in accord with the implied contractual duty of good faith owed to GCP under Mississippi law does not mean adjusting a claim for the exclusive purpose of generating a defense to defeat payment of the claim.

29. Westchester and the other EP obtained a significant premium from GCP, invested the premium paid by GCP, and has realized earnings from its investment. Westchester and the other EP embarked upon a course of conduct to avoid payment under the Policy, all to its benefit and to the financial detriment of GCP.

30. With full knowledge of the consequences of its action, including full knowledge of the significant financial obligations of GCP to its lender and to maintain its

operations, Westchester's willful and wanton conduct and the utter disregard of the Policy language and the Policy rights of GCP compelled GCP to pursue litigation, incur legal fees and costs to obtain what GCP is legally and rightfully entitled to under the Policy.

31. Such willful, wanton or grossly negligent conduct is void of a reasonable or arguable basis to deny or withhold coverage and to delay the payment of the claim which elevates the conduct of Westchester and the other EP to an independent tort.

32. In addition to the contract and compensatory damages sought in Counts I, II and III, GCP is entitled to punitive damages and attorney fees as a proximate result of the willful, wanton and oppressive breach of the Policy and the conduct of Westchester and the other EP that resulted in the breach.

### COUNT III

#### NEGLIGENCE PER SE VIOLATION OF MISSISSIPPI STATUTORY LAW

33. GCP adopts and realleges each allegation set forth in Counts I and II and the previous paragraphs to Count I.

34. In addition to the foregoing, while improperly refusing to pay GCP's claim and forcing GCP to pursue litigation to recover amounts due under the Policy, Westchester violated Mississippi statutory law with respect to the renewal of the Policy. Westchester ignored the statutory notice requirement when an insurer makes material and substantial changes in its coverage. This failure forced GCP to accept the reduced coverage while also having to pay a premium more than 20% greater than the prior year's premium. On May 1, 2020, GCP was compelled to renew its coverage. The premium

charged for the coverage increased more than 20% (from \$3,624,199.00 in 2019 to \$4,533,452.00) although Westchester and the other EP, with blatant impunity, refused to pay under the terms of the Cancellation Coverage.

35. With full knowledge that GCP is required by its lenders to carry the coverage afforded under the Policy and with full knowledge its conduct has and will continue to harm GCP, Westchester failed to provide GCP with the required statutory notice that there was material and substantial changes in the Policy by reducing coverage for the 2020-2021 policy period.

36. The commissions and omissions of Westchester are in clear violation of Miss. Code Ann. §§ 83-5-28 and 83-11-7. The oppressive, wanton or grossly negligent conduct placed GCP in an impossible situation with the Policy expiration imminent and the financial losses sustained by GCP under the current policy continuing to escalate. As such, GCP is entitled to actual and punitive damages.

#### COUNT IV

#### ATTORNEY FEES/VEASLEY FEES

37. GCP adopts and realleges each allegation set forth in Counts I, II and III and the previous paragraphs to Count I.

38. In the event of a punitive damage judgment against Westchester, GCP is entitled to an award of attorney fees or, alternatively, in the absence of a punitive damage judgment, GCP is entitled to attorney fees under the teachings of *Universal Life v. Veasley*.

WHEREFORE, PREMISES CONSIDERED, GCP moves for judgment as follows:

- A. Judgment against Westchester under Counts I, II and III for actual and compensatory damages greater than \$10,000,000.00 in addition to punitive damages greater than \$90,000,000.00 utilizing a multiplier of nine times the actual and compensatory damages.
- B. Attorney fees under Count IV against Westchester in conjunction with the punitive damage award, or alternatively, an award of attorney fees under the teachings of *Universal Life v. Veasley*.
- C. Pre-judgment and post-judgment interest. Pre-judgment interest is based on the liquidated sum fixed under the Policy as of the date of loss.
- D. Any further relief to which GCP may be entitled.

Respectfully submitted this the 24<sup>th</sup> day of September 2020.

GULFSIDE CASINO PARTNERSHIP,  
PLAINTIFF

OWEN and OWEN, P.L.L.C.

BY:

  
\_\_\_\_\_  
JOE SAM OWEN

JOE SAM OWEN (MSB# 3965)  
MITCHELL L. OWEN (MSB# 103895)  
OWEN and OWEN, P.L.L.C.  
1414 25th Avenue  
Post Office Drawer 420  
Gulfport, MS 39502-0420  
TEL: (228) 868-2821  
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EMAIL: [jso@owen-owen.com](mailto:jso@owen-owen.com)  
EMAIL: [mlo@owen-owen.com](mailto:mlo@owen-owen.com)



<b>COVER SHEET</b>		Court Identification Docket #		Case Year	Docket Number
<b>Civil Case Filing Form</b> (To be completed by Attorney/Party Prior to Filing of Pleading)		<div style="border: 1px solid black; padding: 2px;">24</div> County #	<div style="border: 1px solid black; padding: 2px;">11</div> Judicial District	<div style="border: 1px solid black; padding: 2px;">01</div> Court ID (CH, CI, CO)	<div style="border: 1px solid black; padding: 2px;">2020</div> Case Year
		<div style="border: 1px solid black; padding: 2px;">092920</div> Month Date Year		<div style="border: 1px solid black; padding: 2px;">0101460</div> Docket Number	
		<div style="border: 1px solid black; padding: 2px;"></div> Local Docket ID			
Mississippi Supreme Court Administrative Office of Courts		Form AOC/01 (Rev 2020)		This area to be completed by clerk	
In the <u>CIRCUIT</u>		Court of <u>HARRISON</u>		County <u>FIRST</u> Judicial District	
<b>Origin of Suit (Place an "X" in one box only)</b>					
<input checked="" type="checkbox"/> Initial Filing <input type="checkbox"/> Reinstated <input type="checkbox"/> Foreign Judgment Enrolled <input type="checkbox"/> Transfer from Other court <input type="checkbox"/> Other					
<input type="checkbox"/> Remanded <input type="checkbox"/> Reopened <input type="checkbox"/> Joining Suit/Action <input type="checkbox"/> Appeal					
<b>Plaintiff - Party(ies) Initially Bringing Suit Should Be Entered First - Enter Additional Plaintiffs on Separate Form</b>					
<b>Individual</b>					
Last Name		First Name		Maiden Name, if applicable	
<input type="checkbox"/> Check ( x ) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:					
Estate of _____					
<input type="checkbox"/> Check ( x ) if Individual Plaintiff is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity:					
D/B/A or Agency _____					
<b>Business</b> <u>GULFSIDE CASINO PARTNERSHIP</u>					
Enter legal name of business, corporation, partnership, agency - If Corporation, indicate the state where incorporated					
<input type="checkbox"/> Check ( x ) if Business Plaintiff is filing suit in the name of an entity other than the above, and enter below:					
D/B/A _____					
<b>Address of Plaintiff</b> <u>3300 W. BEACH BLVD. GULFPORT, MS</u>					
<b>Attorney (Name &amp; Address)</b> <u>JOE SAM OWEN</u>					
<input type="checkbox"/> Check ( x ) if Individual Filing Initial Pleading is NOT by Attorney					
Signature of Individual Filing: _____					
<b>Defendant - Name of Defendant - Enter Additional Defendants on Separate Form</b>					
<b>Individual</b>					
Last Name		First Name		Maiden Name, if applicable	
<input type="checkbox"/> Check ( x ) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:					
Estate of _____					
<input type="checkbox"/> Check ( x ) if Individual Defendant is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity:					
D/B/A or Agency _____					
<b>Business</b> <u>WESTCHESTER SURPLUS LINES INSURANCE COMPANY</u>					
Enter legal name of business, corporation, partnership, agency - If Corporation, indicate the state where incorporated					
<input type="checkbox"/> Check ( x ) if Business Defendant is acting in the name of an entity other than the above, and enter below:					
D/B/A _____					
<b>Attorney (Name &amp; Address) - If Known</b> _____					
<b>Check ( x ) if child support is contemplated as an issue in this suit.*</b> *If checked, please submit completed Child Support Information Sheet with this Cover Sheet					
<b>Nature of Suit (Place an "X" in one box only)</b>					
Domestic Relations		Business/Commercial		Children/Minors - Non-Domestic	
<input type="checkbox"/> Child Custody/Visitation <input type="checkbox"/> Child Support <input type="checkbox"/> Contempt <input type="checkbox"/> Divorce: Fault <input type="checkbox"/> Divorce: Irreconcilable Diff. <input type="checkbox"/> Domestic Abuse <input type="checkbox"/> Emancipation <input type="checkbox"/> Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Property Division <input type="checkbox"/> Separate Maintenance <input type="checkbox"/> Term. of Parental Rights-Chancery <input type="checkbox"/> UIFSA (eff 7/1/97; formerly URESA) <input type="checkbox"/> Other _____		<input type="checkbox"/> Accounting (Business) <input type="checkbox"/> Business Dissolution <input type="checkbox"/> Debt Collection <input type="checkbox"/> Employment <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Replevin <input type="checkbox"/> Other _____		<input type="checkbox"/> Adoption - Contested <input type="checkbox"/> Adoption - Uncontested <input type="checkbox"/> Consent to Abortion <input type="checkbox"/> Minor Removal of Minority <input type="checkbox"/> Other _____	
Appeals		Probate		Civil Rights	
<input type="checkbox"/> Administrative Agency <input type="checkbox"/> County Court <input type="checkbox"/> Hardship Petition (Driver License) <input type="checkbox"/> Justice Court <input type="checkbox"/> MS Dept Employment Security <input type="checkbox"/> Municipal Court <input type="checkbox"/> Other _____		<input type="checkbox"/> Accounting (Probate) <input type="checkbox"/> Birth Certificate Correction <input type="checkbox"/> Mental Health Commitment <input type="checkbox"/> Conservatorship <input type="checkbox"/> Guardianship <input type="checkbox"/> Joint Conservatorship & Guardianship <input type="checkbox"/> Heirship <input type="checkbox"/> Intestate Estate <input type="checkbox"/> Minor's Settlement <input type="checkbox"/> Muniment of Title <input type="checkbox"/> Name Change <input type="checkbox"/> Testate Estate <input type="checkbox"/> Will Contest <input type="checkbox"/> Alcohol/Drug Commitment (Involuntary)		<input type="checkbox"/> Elections <input type="checkbox"/> Expungement <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Post Conviction Relief/Prisoner <input type="checkbox"/> Other _____	
		Contract		Statutes/Rules	
		<input checked="" type="checkbox"/> Breach of Contract <input type="checkbox"/> Installment Contract <input type="checkbox"/> Insurance <input type="checkbox"/> Specific Performance <input type="checkbox"/> Other _____		<input type="checkbox"/> Bond Validation <input type="checkbox"/> Civil Forfeiture <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Injunction <input type="checkbox"/> Other _____	
				Real Property	
				<input type="checkbox"/> Adverse Possession <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Eviction <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Lien Assertion <input type="checkbox"/> Partition <input type="checkbox"/> Tax Sale: Confirm/Cancel <input type="checkbox"/> Title Boundary or Easement <input type="checkbox"/> Other _____	
				Torts	
				<input type="checkbox"/> Bad Faith <input type="checkbox"/> Fraud <input type="checkbox"/> Intentional Tort <input type="checkbox"/> Loss of Consortium <input type="checkbox"/> Malpractice - Legal <input type="checkbox"/> Malpractice - Medical <input type="checkbox"/> Mass Tort <input type="checkbox"/> Negligence - General <input type="checkbox"/> Negligence - Motor Vehicle <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability <input type="checkbox"/> Subrogation <input type="checkbox"/> Wrongful Death <input type="checkbox"/> Other _____	



**VIA CERTIFIED & ELECTRONIC MAIL**

July 8, 2020

Gulfside Casino Partnership  
P.O. Box 1600  
Gulfport, MS 39502  
Attn: Mike Bruffey

<b>Insurer/Policy:</b>	Westchester Surplus Lines Ins. Company	D37406867007
	Lloyd's of London	B1230AP04163F19
	Interstate Fire & Casualty Insurance	VRXCN000006004
	AXIS Surplus Insurance Company	EAF62254619
	Sterr Surplus Lines Insurance Company	SLSTPTY11175519
	Everest Indemnity	CA3P005852191
	Allied Word Assurance	031069291A
	Endurance American Specialty Insurance	ESP30001065000
	Certain Underwriters at Lloyd	VPCCN000006004
	Independent Specialty Insurance Company	VISCN000006004
<b>Insured:</b>	Gulfside Casino Partnership	
<b>Date of Loss:</b>	April 24, 2020	
<b>Location:</b>	3300 W. Beach Blvd., Gulfport, Mississippi 39502	
<b>Our File #:</b>	3591330	

Dear Mr. Bruffey:

This will acknowledge receipt of your claim for a loss said to have occurred on or around April 24, 2020. As you know, Crawford & Company is authorized by insurers Westchester Surplus Lines Ins. Company, Lloyd's of London, Interstate Fire & Casualty Insurance, AXIS Surplus Insurance Company, Starr Surplus Lines Insurance Company, Everest Indemnity Insurance Company, Allied Word Assurance, Endurance American Specialty Insurance Company, Certain Underwriters at Lloyd's and Independent Specialty Insurance Company (who have issued the policies identified above and are hereafter referred to as the "Insurers"), to assist in the investigation of the above claim. Insurers acknowledge receipt of this notice of loss, which is being investigated under a full Reservation of Rights.

You have advised that, on or around March 17, 2020 the Northside Casino, Hotel, Restaurants, Bars and the Beachside Casino, Hotel, Restaurants, Bars, Spa and the Windance Country Club were ordered closed by the Mississippi Gaming Commission, in consultation with the Governor and Health Officials for the State of Mississippi. This closure prevented patrons from visiting, staying and gaming at the various establishments on the property, and resulted in the cancelation or postponement of performances and events that had been scheduled.



The Insurers have reviewed your responses to the Requests for Information, including the supplemental responses provided on May 16, 2020, which are discussed in more detail below.

The Insurers issued the Policies, as shown above, to Gulfside Casino Partnership for the period from May 1, 2019 to May 1, 2020 (collectively, the "Policies"), subject to the terms, conditions, limitation and exclusions set forth in the Policies.). The Insurers call your attention to certain provisions in the Policies that may be relevant to your claim. We suggest you read the entirety of all of the Policies for a complete understanding of their terms and provisions. The failure to mention any specific provision of the Policies in this letter should not be construed as a waiver of any provision, all of which are specifically reserved. Each Insurer issued its own Policy, and each Insurer's liability will be governed by the terms and conditions of its own Policy and will be subject to its proportionate share of any limit or sublimit of liability.

### **I. Provisions Applicable to All Policies**

The following provisions are contained in the manuscript form ("Market policy form") common to all Policies:

#### **7. INSURING AGREEMENT**

This Policy insures against all risks of direct physical loss, damage or destruction in the Coverage Territory to Covered Property due to Flood, Earth Movement (including Earthquake), Sprinkler Leakage, Named Storm, Wind, Hail, Wind Driven Rainwater including loss that results, ensues or arises from the foregoing and including general average, salvage and similar charges on shipments insured in this policy unless specifically excluded herein. This policy also insures time element loss in the Coverage Territory. Coverages specifically referenced herein are deemed to be examples of what this policy insures but does not limit the insurance provided by this policy.

\* \* \*

#### **13. COVERAGE**

\* \* \*

### **B. COVERAGES**

This policy insures all risks of direct physical loss including but not limited to the following coverages outlined herein unless otherwise excluded. All insurance provided in this policy is subject to the Program Limit of Liability unless there is a specific Sub-limit of insurance for such coverage. It is agreed and understood that time element loss including but not limited to business interruption, extra expense and rental value are



included when there is any loss, damage or destruction to Covered Property by a covered cause of loss whether or not the coverage outlined specifically refers to time element.

## **1. BUSINESS INTERRUPTION – GROSS EARNINGS**

- (a) Business Interruption means loss resulting from the necessary interruption or reduction of business operations or services conducted by an Insured and unless stated otherwise herein is caused by direct physical loss, damage or destruction to Covered Property or property of the type insured hereunder, by any of the covered causes of loss insured by this policy.
- (b) Business Interruption shall be adjusted on the basis of the actual loss sustained by the Insured due to interruption or reduction of business operations and shall consist of Gross Earnings less charges and expenses which do not necessarily continue during the interruption or reduction of business operations. There shall be consideration given to the continuation of normal charges and expenses, including payroll expense, to the extent necessary to resume operations of the Insured with the same quality of operations which existed immediately before the loss.

\* \* \*

- (e) RESUMPTION OF OPERATIONS: If the Insured could reduce the loss resulting from the interruption of business,

- (1) by a complete or partial resumption of operations at a location owned by the same entity suffering the loss, whether damaged or not; or
  - (2) by making use of other available stock, merchandise or similar property; then such reduction will be taken into account in arriving at the amount of loss hereunder.

\* \* \*

- (h) If a covered loss could be insured by both business interruption and another time element coverage insured herein, the Insured shall have the right to determine which time element coverage will apply.

\* \* \*

## **2. EXTRA EXPENSE**





This policy insures the excess cost necessarily incurred by an Insured to continue the operation of the Insured's business or facility that would not have been incurred had there been no loss or damage by any of the covered causes of loss insured herein during the term of this policy to Covered Property.

Extra Expense includes the costs and expenses incurred by an Insured associated with dredging and related work at an Insured Location as a result of a covered cause of loss.

\* \* \*

#### **8. INGRESS/EGRESS:**

This policy insures Time Element incurred by an Insured due to the necessary interruption, whether in whole or in part, of the Insured's business or services due to impairment of ingress or egress to/from an Insured Location, other than ingress or egress due to civil or military authority, whether or not the premises or property of the Insured is damaged, provided that such impairment is a direct result of a cause of loss insured by this policy.

\* \* \*

Coverage ends when the number of days shown in the Sub-Limits, if any, has been exceeded.<sup>1</sup>

\* \* \*

#### **9. CIVIL/MILITARY AUTHORITY:**

This policy insures the Time Element incurred by an Insured due to the necessary interruption, whether in whole or in part, of the Insured's business or services due to impairment of ingress or egress to/from an Insured Location by a Civil, Government or Military Authority, whether or not the premises or property of the Insured is damaged, provided that such impairment is direct result of a cause of loss insured by this policy.

The Insured may rely on a Civil, Government or Military's apparent authority even if it is ultimately determined the Civil, Government or Military Authority did not have authority to act.

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<sup>1</sup> Coverage is provided for a maximum of 30 days, not to exceed \$10,000,000.





This coverage is extended to apply to Contingent Time Element for suppliers, customers and attraction properties in the United States of America including Hawaii, District of Columbia and Alaska; Territories and Possessions.

Coverage ends when the number of days shown in the Sub-Limits, if any, has been exceeded. It is agreed and understood that multiple actions by a Civil, Government or Military Authority can take place in any Occurrence. The number of days shown in the Sub-Limits apply to each action.<sup>2</sup>

No Qualifying Period applies to this provision.

The expiration date of this policy will not cut short the period for Civil/Military Authority.

\* \* \*

#### 17. CANCELLATION COVERAGE<sup>3</sup>

This policy is extended to insure the Time Element loss incurred by an Insured resulting from the cancellation of, and/or inability to accept bookings or reservations for accommodations, receive admissions, and/or interference with the business at any insured Location all as a result of the Occurrence of the following whether or not physical damage occurs to property of the Insured or regardless of whether caused by or resulting from loss, damage or destruction from a covered cause of loss:

\* \* \*

- (c) a contagious or infectious disease at an insured Location, as determined by a public or civil authority, that affects persons or premises;

\* \* \*

- (e) any of the following that occur within a radius of 15 miles of an insured Location, to the extent such Time Element loss is not otherwise insured elsewhere in this policy;

- (1) outbreak of a contagious and/or infectious disease as determined by a public or civil authority;

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<sup>2</sup> Coverage is provided for a maximum of 60 days, not to exceed \$10,000,000.

<sup>3</sup> The sublimit for Cancellation Coverage is \$10,000,000.



\* \* \*

- (f) closing in whole or in part of an insured Location either by the Insured or by a civil authority due to the existence or threat of hazardous conditions either actual or suspected at an insured Location;

\* \* \*

Coverage in this provision shall not conflict or reduce coverage provided elsewhere in this policy.

\* \* \*

#### **48. INTERRUPTION BY CASINO CONTROL COMMISSION**

In an order of a Casino Control Commissioner or State equivalent prohibits access to an Insured Location and provided such order is the direct result of actual or imminent physical loss, damage or destruction of the type insured against under this policy, irrespective of whether or not physical loss, damage or destruction actually occurs, at the insured Location or within 10 miles of it, this policy shall insure the period of time that access is prohibited, beginning at the commencement of such closure but not to exceed the number of consecutive days shown in the Limits of Liability.<sup>4</sup>

The Policies further contain the following potentially applicable exclusions.

#### **D. PERILS EXCLUDED**

Unless otherwise insured herein, this policy does not insure against loss or damage caused by any of the following excluded causes of loss EXCEPT a covered cause of loss ensuing, resulting or arising from the excluded cause shall be insured. If a loss involves both a covered cause of loss and an excluded cause of loss, this policy shall pay for the portion of loss insured by this policy.

\* \* \*

- (8) loss of market;

\* \* \*

---

<sup>4</sup> Coverage is provided for a maximum of 60 days.



- (11) any loss or damage caused by, resulting from, contributed to or made worse by actual alleged or threatened release, discharge escape or dispersal of Contaminants or Pollutants, all whether direct, indirect, proximate or remote or in whole or in part caused by contributed to or aggravated by any physical damage insured by this policy.

Nevertheless, if a covered cause of loss not otherwise excepted or excluded from coverage, arises directly or indirectly from seepage or contamination or pollution, any loss or damage insured under this policy arising directly from that covered cause of loss is insured, subject to the provisions of this policy.

Contaminants or Pollutants mean any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use to property insured hereunder, including, but not limited to, bacteria, fungi, virus, or hazardous substances as listed in the Federal Water, Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Control Act or as designated by the U. S. Environmental Protection Agency. Waste includes materials to be recycled, reconditioned or reclaimed.

This exclusion shall not apply when loss or damage is directly caused by a covered cause of loss.

\*\*\*

The Policies also contain Communicable Disease and Contract Penalties coverage provisions, but, as noted, the Sub-Limits of Liability provision states "Not Covered" with respect to those provisions.

\*\*\*

## **II. Provisions Specific to Individual Policies**

In addition to the language cited above, there are certain endorsements which are specific to the individual Policies. These endorsements are as follows:

### **A. Provisions Specific to the Westchester Policy**

The Westchester Policy contains the following endorsement, which modifies the provisions of the Market policy form:



**NUCLEAR, BIOLOGICAL, CHEMICAL, RADIOLOGICAL EXCLUSION  
ENDORSEMENT**

**THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT  
CAREFULLY.**

**This endorsement modifies insurance provided under the following:**

\* \* \*

**COMMERCIAL PROPERTY COVERAGE PART**

\* \* \*

The following exclusions are added to your Policy or Coverage Part.

This insurance does not apply to:

\* \* \*

B. Loss or damage arising directly or indirectly from the dispersal, application or release of, or exposure to, chemical, radiological, or biological materials or agents, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by, any physical loss or damage insured against by this Policy or Coverage Part, however such dispersal, application, release or exposure may have been caused.

**B. Provisions Specific to the AXIS Policy**

The AXIS Policy contains the following endorsements, which modify the provisions of the Market policy form:

**This endorsement changes the policy. Please read it carefully.**

**COMMERCIAL PROPERTY EXCLUSION ENDORSEMENT**

**1. EXCLUSIONS**

**A. POLLUTANTS AND CONTAMINANTS EXCLUSION**

1) As used in this endorsement, Pollutants or Contaminants means:

- a. Any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.



b. Pollutants or contaminants include, but are not limited to those materials that can cause or threaten damage to human health or human welfare or cause or threaten damage, deterioration, loss of value, marketability or loss of use to property. Pollutants or contaminants include, but are not limited to bacteria, fungi, mold, mildew, virus or hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, Toxic Substances Control Act or as designated by the U.S. Environmental Protection Agency or any other governing authority

2) This policy does not cover any of the following.

- a. Loss or damage caused by, resulting from, contributed to or made worse by actual, alleged or threatened release, discharge, escape or dispersal of pollutants or contaminants, however caused;
- b. The expense or cost to extract or remove pollutants or contaminants from debris;
- c. The expense or cost to extract or remove pollutants or contaminants from land or water;
- d. The expense or cost to extract or remove, restore or replace contaminated or polluted land or water;
- e. The costs associated with the enforcement or any ordinance or law which requires the Insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of pollutants or contaminants;
- f. Any cost to transport any property or debris to a site for storage or decontamination required because the property is infected by pollutants or contaminants, whether or not such removal, transport or decontamination is required by law, regulation or any authority governing such matters;
- g. Any cost to store or otherwise dispose of any property because pollutants or contaminants infect the property; or
- h. Any expense for the investigation or defense of any loss, damage or any cost, loss of use expense, fine or penalty or for any expense or claim or suit related to any of the above.

\* \* \*

**This endorsement changes the policy. Please read it carefully.**





**NUCLEAR, CHEMICAL AND BIOLOGICAL EXCLUSION  
ENDORSEMENT**

The following exclusions are added to your Policy:

\* \* \*

B. Loss or damage arising directly or indirectly from the dispersal, application or release of, or exposure to, chemical or biological materials or agents that are harmful to property or human health, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by, any physical loss or damage insured against by this Policy, however such dispersal, application, release or exposure may have been caused.

C. This exclusion applies to all coverage under the Policy notwithstanding any coverage extension or any other endorsement.

**C. Provisions Specific to the Endurance Policy**

The Endurance Policy contains the following endorsements, which modify the provisions of the Market policy form:

**ABSOLUTE POLLUTION EXCLUSION**

**THIS ENDORSEMENT CHANGES THIS POLICY. PLEASE READ IT  
CAREFULLY.**

This policy does not apply to any loss, direct physical loss or damage, demand, claim, occurrence, expense or suit arising out of or in any way related to pollution including any cost or expense arising out of or in any way related to testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing pollution. We shall have no duty of any kind with respect to any such loss, direct physical loss or damage, demand, claim, occurrence, expense or suit. This exclusion applies to all coverages under this policy.

As used in this exclusion, "pollution" means any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials includes materials which are intended to be or have been recycled, reconditioned or reclaimed.

All other terms and conditions of this policy shall remain unchanged.

**COMMUNICABLE DISEASE EXCLUSION**



**THIS ENDORSEMENT CHANGES THIS POLICY. PLEASE READ IT CAREFULLY.**

This Policy excludes any loss, expense, cost or damage directly or indirectly arising out of, contributed to by, or resulting from, in whole or in part, the actual or alleged transmission of a "communicable disease", or threat thereof, including any cost or expense arising out of or related to testing for, prevention of, failure to report the disease to governmental authorities, monitoring, cleaning up, removing, containing, treating, or neutralizing the "communicable disease".

"Communicable disease", as used in this endorsement, means any sickness or malady capable of being transmitted.

All other terms and conditions of this policy shall remain unchanged.

**D. Provisions Specific to the Independent Specialty Insurance Company, Certain Underwriters at Lloyds, Interstate Fire & Casualty Company and Lloyd's of London Policies**

The Velocity policy, which encompasses Independent Specialty Insurance Company, Certain Underwriters at Lloyds, Interstate Fire & Casualty Company, and Lloyd's of London Policies, contains the following endorsement, which modifies the provisions of the Market policy form:

**MANDATORY EXCLUSIONS**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY**

To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. This endorsement does not change any other provision of the insurance policy to which it is affixed. This endorsement is a part of your insurance policy and takes effect on the effective date of your insurance policy unless another effective date is shown.

The Insurer(s) and/or Company(s) does not insure for actual or alleged loss damage, cost or expense caused directly or indirectly by any of the following. Such loss, damage, cost or expense is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss or damage. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area:

**A. Nuclear, Chemical or Biological and Radiological**

N/A



B. Pollution Contamination

N/A

C. Asbestos, Dioxin or Polychlorinated Biphenols

N/A

D. Microorganism

N/A

E. Debris Removal Exclusion

As a result of a covered loss, we will pay the expense subject to the limit of insurance to remove debris that has been damaged or destroyed. However, in connection with the removal of debris, we will not pay the expense to:

- (1) Extract contaminants or pollutants from the debris;
- (2) Extract contaminants or pollutants from land or water;
- (3) Remove, restore or replace contaminated or polluted land or water;
- (4) Remove or transport any property or debris to a site for storage or decontamination required because the property or debris is affected by pollutants or contaminants, whether or not such removal, transport, or decontamination is required by law or regulation.

It is a condition precedent to recovery under this insurance that we shall have paid or will pay a Covered Loss and that you shall give written notice to us of your intent to claim for the cost of removal of debris or cost to clean up not later than 180 days after the date of such physical loss or damage to your property.

\* \* \*

Such Damage or Consequential loss described in 1, 2, or 3 above is excluded regardless of any other cause that contributed concurrently or in any other sequence.

All other terms and conditions, insured coverage and exclusions of this insurance Policy remain unchanged, including applicable limits, sublimits and deductibles, and apply in full force and effect to the coverage provided by this Policy.

**E. Provisions Specific to the Everest Policy**



The Everest Policy contains the following endorsements, which modify the provisions of the Market policy form:

**SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION  
EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY MANUSCRIPT POLICY**

**1. SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION  
EXCLUSION**

Notwithstanding any provision in the policy to which this Endorsement is attached, this policy does not insure against loss, damage, costs or expenses in connection with any kind or description of seepage and/or pollution and/or contamination, direct or indirect, arising from any cause whatsoever. Nevertheless if a peril not excluded from this policy arises directly or indirectly from seepage and/or pollution and/or contamination any loss or damage insured under this policy arising directly from that peril shall (subject to the term, conditions and limitations of the policy) be covered.

However, if the insured property is the subject of direct physical loss or damage from which this Company has paid or agreed to pay then this policy (subject to its terms and conditions and limitation) insures against direct physical loss or damage to the property insured hereunder caused by resulting seepage and/or pollution and/or contamination.

The Insured shall give notice to the Company any of intent to claim no later than 12 months after the date of the original physical loss or damage.

\* \* \*

**AUTHORITIES EXCLUSION**

Notwithstanding any of the preceding provisions of this Endorsement, except in respect of certain specific coverage(s) provided elsewhere in the policy to which this Endorsement is attached, this policy does not insure against fines, penalties and expenses directly attributable to such fines and penalties incurred or sustained by or imposed on the Insured at the order of any government agency, court or other authority arising from any cause whatsoever.

\* \* \* There may be other and/or additional reasons that may become known that are not herein specified, and the Market expressly reserves the right to address those issues as they arise.



\*\*\*

As a general matter, the Policies afford coverage only when there has been direct physical loss, damage or destruction. In the absence of such damage, there is no coverage.

The Policies also contain several exclusions that may apply to preclude coverage, including an exclusion for pollutants and contaminants, which lists virus in the definition of contaminants or pollutants in the main form of the Policies. Further, there are endorsements to specific Policies which further exclude Pollutants and Contaminants, biological materials or agents that are harmful to property or human health, and Communicable Disease in addition to the Sub-Limits provision in all Policies stating that Communicable Disease is "Not Covered."

### III. Insurers' Response to Information Provided In Response to Requests for Information

Insurers note your position in your responses to the Requests for Information stating that there was physical loss or damage to property as well the "threat of imminent physical loss or damage." However, your responses do not identify what physical loss or damage to property occurred or has been threatened. Your May 16, 2020 responses also question why the Requests for Information even asked whether any direct physical loss or damage to insured location(s) occurred.

According to your May 4, 2020 responses, you are seeking coverage under both the Cancellation Coverage provision and Interruption by Casino Control Commission provision at this time, although the Insured has reserved its right to seek coverage under other provisions in the Policies.

As noted above, certain provisions in the Policies require physical loss, damage, and/or destruction to insured property or to the type of property specified in the coverage provision under which you are seeking to recover. This includes the Interruption by Casino Control Commission provision, which requires an order issued by a Casino Control Commissioner (or State equivalent) to be "the direct result of actual or imminent physical loss, damage or destruction of the type insured against under this policy" at the insured Location or within 10 miles. While the provision applies even if physical loss, damage or destruction does not actually occur, if the order was not issued as a direct result of actual physical loss or damage, the provision requires that the order have been issued as a direct result of **imminent physical loss, damage or destruction of the type insured by the Policies**. Other than stating that you believe that there was a "threat" of imminent physical loss, damage or destruction, you have not, to date, identified any **covered** physical loss, damage, or destruction that actually occurred **or that was imminent** at the time that the order by the Mississippi Gaming Commission in question was issued.

The March 16, 2020 order by the Mississippi Gaming Commission does not state that it was issued as a result of imminent physical loss, damage or destruction of type insured by the





Policies. Accordingly, that Emergency Order of Closure may not provide a basis for coverage under the Interruption by Casino Control Commission provision.

Given your responses to date, Insurers request that you respond to the additional Requests for Information at the end of this letter.

Insurers continue to reserve all rights, privileges, and defenses under the Policies, at law, or otherwise. As specifics regarding the claim are provided and further information developed from our investigation (including, as required, requesting additional information and support) other provisions in the Policies not mentioned herein may also become relevant and affect, bar, or limit coverage for your claim and Insurers may also develop a better understanding of the potential applicability of those provisions discussed above. Please refer to the Policies for the complete terms and conditions.

If you have any information that you would like to bring to our attention concerning this matter, please forward it to our office for further evaluation. This letter, the Insurers' investigation of the claim, and any other efforts taken by or on behalf of Insurers, are not, and should not be construed as, a waiver of any terms, conditions, exclusions or other provisions of the policy, or any other policies of insurance issued by the Insurers. The Insurers expressly reserve all of their rights under the Policies, including the right to amend the above reservation of rights to include any additional grounds for disclaimer of coverage, including but not limited to those set forth above. The Insurers acknowledge that, by accepting this reservation of rights, Gulfside Casino Partnership is not waiving any of its rights under the Policies.

Crawford & Company is authorized to handle the adjustment of the referenced matter on behalf of the Insurers. Please understand that no representative of Crawford, or of any other consultant that may be retained by or on behalf of Insurers, has any authority either to bind Insurers with respect to coverage, or to interpret, waive or alter any of the terms, conditions, or limitations of the Policies. All coverage determinations are reserved exclusively to the Insurers.

\*\*\*

#### **IV. Additional Requests for Information**

- 1) Are you currently seeking to recover under any provision of the Policies other than the Cancellation Coverage and the Interruption by Casino Commission provisions? If so, please provide the following information:
  - a. The provision(s) under which you are seeking to recover.
  - b. The basis for your claim under each such provision, including the covered physical loss, damage, or destruction that you believe meets the applicable requirements under that provision.
- 2) If you are seeking to recover under the Interruption by Casino Commission provision, based on physical loss, damage, or destruction, or a threat of imminent physical loss,





damage, or destruction of the type insured against at the time the Mississippi Gaming Commission issued the Emergency Order of Closure, please provide the following information:

- a. What property was physically lost, damaged, or destroyed, or was threatened with imminent physical loss, damage or destruction, at the time the Emergency Order of Closure was entered?
  - b. Where was such property located?
  - c. What type of physical loss, damage, or destruction had occurred or was imminent?
  - d. Please provide any documentation or information demonstrating that such physical loss, damage, or destruction had occurred or was imminent at the time the Emergency Order of Closure was entered.
- 3) Any and all information and documentation of direct physical loss, damage, or destruction of insured property, to the extent you claim such direct physical loss, damage, or destruction.
- 4) Any and all other or further information and documentation supporting your claim.

Should you have any questions, please do not hesitate to contact the undersigned at (404) 414-5390.

Best regards,

*Wm. B Emberton*

Brian Emberton  
Executive General Adjuster  
Crawford & Company  
Mobile: 404-414-5390  
Fax: 678-937-8233  
E-Mail: [brian\\_emberton@us.crawco.com](mailto:brian_emberton@us.crawco.com)

Cc: Renee King  
Senior Claims Specialists  
BXS Insurance  
2909 13<sup>th</sup> Street  
Gulfport, MS 39507



July 13, 2020

Brian Emberton  
Crawford Global Technical Services  
5335 Triangle Pkwy NW  
Peachtree Corners, GA 30092

*Via Email: [brian\\_emberton@crawco.com](mailto:brian_emberton@crawco.com)*

Re: Insured: Gulfside Casino Partnership  
Your File No.: 3591330  
Insurer/Policy:

- Westchester Surplus Lines Ins. Company (D37406867007) – coverage (20%)
- Lloyd's of London (B1230AP04163F19) – coverage (20%)
- Interstate Fire & Casualty Insurance (VRXCN000006004) – coverage (11%)
- AXIS Surplus Insurance Company (EAF62254619) – coverage (10%)
- Starr Surplus Lines Insurance Company (SLSTPTY11175519) – coverage (10%)
- Everest Indemnity (CA3P005852191) – coverage (6.67%)
- Allied Word Assurance (031069291A) – coverage (6.67%)
- Endurance American Specialty Insurance (ESP30001065000) – coverage (6.67%)
- Certain Underwriters at Lloyd (VPCCN000006004) – coverage (5.6%)
- Independent Specialty Insurance Company (VISCN000006004) – coverage (3.4%)

Dear Brian:

I am writing to acknowledge receipt of your letter of July 8, 2020. Also, I am writing to make a formal demand of policy limits under the Cancellation Coverage available under the policies.

First, it is important to note that it has been 75 days since Gulfside Casino Partnership (Gulfside) put its insurers on notice of its claim on April 24, 2020. After your received our notice of claim, you sent an email dated April 29, 2020 wherein you requested that Gulfside provide information about its business and about its claim. Less than seven days later, on May 4, 2020, Gulfside provided you with the detailed information you requested. After we sent you the responsive information, we immediately confirmed your receipt of same. We then scheduled a call with you on May 7, 2020. During the call, you requested additional information. On May 16, 2020, Gulfside provided you with all of the information you requested. We specifically identified the Cancellation Coverage as applicable and demonstrated losses well in excess of \$10 million.

Nearly two months later we have just received your “reservation of rights” letter. We understand each of the points you have raised in your letter; however, there is nothing in the letter that would bring into question the applicability of the Cancellation Coverage available under the policies. Notably, you do not ask us for any additional information about this coverage.



Crawford Global Technical Services  
July 13, 2020  
Page 2 of 2

In light of the clear policy language and the losses sustained, Gulfside hereby makes its formal demand for payment of policy limits under the Cancellation Coverage against each insured for its proportionate share, said limit being \$10 million. We would ask that payment by each insured be remitted promptly.

If coverage is denied, each insured should specify the reason(s) for its denial. Gulfside reserves all rights with respect to any other coverage(s) available under the policies.

Sincerely,

Gulfside Casino Partnership dba  
Island View Casino Resort

A handwritten signature in black ink, appearing to read "M. E. Bruffey", with a stylized flourish at the end.

Michael E. Bruffey  
Vice President – General Counsel

cc: Bancorpsouth Insurance Services, Inc.



September 10, 2020

Brian Emberton  
Crawford Global Technical Services  
5335 Triangle Pkwy NW  
Peachtree Corners, GA 30092

Via Email: [brian\\_emberton@crawco.com](mailto:brian_emberton@crawco.com)

Re: Insured: Gulfside Casino Partnership  
Your File No.: 3591330  
Insurer/Policy:

- Westchester Surplus Lines Ins. Company (D37406867007) – coverage (20%)
- Lloyd's of London (B1230AP04163F19) – coverage (20%)
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- Endurance American Specialty Insurance (ESP30001065000) – coverage (6.67%)
- Certain Underwriters at Lloyd (VPCCN000006004) – coverage (5.6%)
- Independent Specialty Insurance Company (VISCN000006004) – coverage (3.4%)

Dear Brian:

It has been two months since I last wrote to you and nearly five months since we initially filed our claim under the referenced policies. In my letter to you dated July 13, 2020, Gulfside acknowledged receipt of your reservation of rights letter dated July 8, 2020, and acknowledged the points raised in the letter. Nothing in the letter brought into question the applicability of the Cancellation Coverage (\$10 million limit). In light of the clear policy language and the losses Gulfside sustained, in our letter of July 13, 2020, we made a formal demand for payment of policy limits under the Cancellation Coverage against each insurer for its proportionate share. The demand was ignored and thus we consider your actions a denial of the Gulfside claim.

You should understand that since we were closed for sixty-five (65) days we broke certain covenants under our credit agreement and were required, through amendments and waivers, to accept more unfavorable rates and terms from the banks. The increase in rates translates into incremental interest expense exceeding \$1 million annually. These increased rates and more onerous terms exist to this day and will continue to negatively impact us going forward.



Crawford Global Technical Services  
September 10, 2020  
Page 2 of 2

I want to ensure that you and the insurers are acutely aware of the damages we have suffered and continue to suffer.

Sincerely,

Gulfside Casino Partnership

A handwritten signature in black ink, appearing to read "M. E. Bruffey", with a stylized flourish at the end.

Michael E. Bruffey  
Vice-President General Counsel

cc: Bancorpsouth Insurance Services, Inc.

# Westchester Surplus Lines Insurance Company

11575 Great Oaks Way  
Suite 200  
Alpharetta, GA 30022

## NOTICE

**POLICY NO.** D37406867 007

**NAME OF INSURED:** Gulfside Casino Partnership, dba Island View Casino Resort, dba Windance Country Club

**ADDRESS:** 3300 W. Beach Blvd.  
P.O. Box 1600  
Gulfport, MS 39502

We are pleased to enclose your policy for this account.

Please be advised that by binding this risk with the above referenced Surplus Lines Insurance Company, you agree that as the Surplus Lines Broker responsible for the placement of this insurance policy, it is your obligation to comply with all States Surplus Lines Laws including completion of any declarations/affidavits that must be filed as well as payment of any and all Surplus Lines taxes that must be remitted to the State(s). We will look to you for indemnification if controlling Surplus Lines Laws are violated by you as the Surplus Lines broker responsible for the placement.

You further confirm that any applicable state requirement concerning a diligent search for coverage by admitted carriers has been fulfilled in accordance with state law.

Thank you for this placement and your regulatory compliance.

Date: 6/17/2019





**Policy Declarations****Westchester**  
A Chubb Company <sup>TM</sup>

Policy No. D37406867 007	Renewal of: D37406867 006
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**NAMED INSURED & MAILING ADDRESS**

Gulfside Casino Partnership, dba Island View Casino Resort, dba Windance Country Club  
 3300 W. Beach Blvd.  
 P.O. Box 1600  
 Gulfport, MS 39502

**POLICY PERIOD**

When Coverage Begins: 05/01/2019

12:01 A. M. Local Time At The Location Of Covered Property

When Coverage Ends: 05/01/2020

12:01 A. M. Local Time At The Location Of Covered Property

**INSURING COMPANY**

**Westchester Surplus Lines  
Insurance Company**

**Producer's Name & Address:**

AMWINS BROKERAGE OF GEORGIA LLC  
 3630 PEACHTREE ROAD NE SUITE 1700  
 ATLANTA, GA 30326

Producer No: 277387

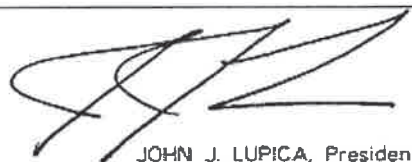
This insurance is issued pursuant to Mississippi law covering surplus lines insurance. The company issuing the policy is not licensed by the State of Mississippi, but is authorized to do business in Mississippi as a nonadmitted company. The policy is not protected by the Mississippi Insurance Guaranty Association in the event of the insurer's insolvency.

**ATTACHED FORMS**

This policy is completed by the following: BB-5W58a-PA (05/18) and forms and endorsements attached thereto.

**Authorization Information**

Dated: 06/17/2019



JOHN J. LUPICA, President  
 Authorized Representative

**Westchester**  
A Chubb Company

## Common Policy Declarations

Policy Number: D37406867 007  
Named Insured & Mailing Address:  
Gulfside Casino Partnership, dba Island View Casino  
Resort, dba Windance Country Club  
3300 W. Beach Blvd.  
P.O. Box 1600  
Gulfport, MS 39502

Company Name: Westchester Surplus Lines Insurance Company  
Producer's Name & Address:  
AMWINS BROKERAGE OF GEORGIA LLC  
3630 PEACHTREE ROAD NE SUITE 1700  
ATLANTA, GA 30326  
277387

### General Policy Information

Business Description: Casino/Hotel Resort  
with Golf Country Club

When Coverage Begins: 05/01/2019 12:01 A.M. Local Time At The Location Of Covered Property

When Coverage Ends: 05/01/2020 12:01 A.M. Local Time At The Location Of Covered Property

**In return for the payment of premium, and subject to all the terms and conditions of this policy, we agree to provide the insurance as stated in this policy.**

The premium for this policy is indicated below next to the applicable Coverage Form(s).

*Coverage Form*

Commercial Property \$ 408,268

NOTE: This insurance policy is issued pursuant to Mississippi law covering surplus lines insurance. The company issuing the policy is not licensed by the State of Mississippi, but is authorized to do business in Mississippi as a nonadmitted company. The policy is not protected by the Mississippi Insurance Guaranty Association in the event of the insurer's insolvency.

Surplus Lines Licensee Tomas Tio

Mississippi Premium: \$ 408,268.00

Fees: \$ 0.00

Surplus Lines Tax: \$ 16,330.72

Stamping Fee: \$ 1,020.67

MS Nonadmitted Policy Fee: \$ 12,248.04

**Total Premium:** \$ 408,268

**Total Assessments, Fees, Surcharges, Taxes:** \$ 0

**Total Amount Due:** \$ 408,268

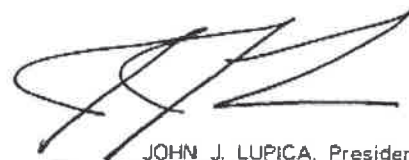
Minimum Earned Premium: \$ \*142,894

### Attached Forms Information

**\*Subject to Hurricane Minimum Earned Premium Endorsement, whichever is greater  
See Forms Schedule CPfs2 -PA**

### Authorization Information

Date: 06/17/2019



JOHN J. LUPICA, President

Authorized Representative

### Internal Reference Number:

These Declarations together with the Coverage Declarations, Common Policy Conditions and Coverage Conditions (if applicable), Coverage Form(s) and Forms and Endorsements, if any, issued to form a part thereof, complete the above numbered policy.

## Forms Schedule

Company: Westchester Surplus Lines Insurance Company  
 SYM: FS Policy ID: D37406867 007

<b>Policy Period</b>	When Coverage Begins: 05/01/2019	12:01 A.M. Local Time At The Location Of Covered Property
	When Coverage Ends: 05/01/2020	12:01 A.M. Local Time At The Location Of Covered Property
<b>Applicable to all Coverage Parts</b>	SLPD-PA (04/18)-Surplus Lines Declarations BB-5W58a -PA (05/18)-Common Policy Declarations SL-34255a (01/16)-Service of Suit Endorsement TRIA24 (01/15)-Policyholder Disclosure Notice of Terrorism Insurance Coverage ALL-20887 (10/06)-CHUBB Producer Compensation Practices & Policies ALL-21101 (11/06)-Trade or Economic Sanctions Endorsement IL P 001 01 04-U.S. Treasury Departments' Office of Foreign Assets Control ("OFAC") Advisory Notice to Policyholders MA-608255p (04/15)-Claims Directory Property and Inland Marine LD-5S23j (03/14)-Signature Endorsement	
<b>Commercial Property</b>	ACE0210 (01/08)-Nuclear, Biological, Chemical, Radiological Exclusion Endorsement ACE061 (08/18)-Asbestos Material Exclusion (Named Peril Exception) ACE063 (07/16)-Occurrence Limit Of Liability Endorsement ACE0681 (10/11)-Definition Of Loss Occurrence Endorsement ACE0934 (10/18)-Additional Policy Conditions Endorsement ACE126 (10/14)-Electronic Data Amendment Endorsement ALL-10750 (01/15)-Terrorism Exclusion Endorsement ACE0745 (09/12)-Certificate Of Insurance - Automatic Additional Insured And Loss Payee Endorsement -Gulfside Casino Partnership Property Insurance Policy MS 207824 (07/17)-General Amendatory Endorsement	
<b>Commercial Inland Marine</b>	Not Covered	
<b>Commerical General Liability</b>	Not Covered	
<b>Boiler Machinery</b>	Not Covered	

Gulfside Casino Partnership  
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## NAMED PERILS PROPERTY FORM

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## NAMED PERILS PROPERTY FORM

### DECLARATIONS

#### 1. INSURED

This Policy insures:

**Gulfside Casino Partnership** (First Named Insured);  
dba Island Casino Resort;  
dba Windance Country Club;  
dba Beach Blvd Steamer;  
dba Coast Candy Maker;  
Gulfside Casino, Inc;  
Copa Casino of Mississippi, LLC;  
Carter Green Investments

and any: subsidiary, associated or allied company; parent and/or holding company (if the First Named Insured is not the parent or holding company); corporation; limited liability company (including members and spouses); trust or association; firm and/or organization including not-for-profits; partnerships and joint ventures (including partners, members & spouses) which are owned (wholly or partially) or controlled by an Insured or in which an Insured is responsible to insure, but if the Insured having such interest does not have a majority interest or management control or is not responsible to insure, then only the Insured's interest in such partnership or joint venture shall be an Insured under this policy; any other company in which an Insured has management control, ownership or is responsible to insure; any other company, firm or organization in which an Insured has agreed to be responsible to insure; any other party in interest that is required by contract or other agreement to be included as an Insured; newly acquired, formed or organized of any of the foregoing.

It is agreed and understood if one of the above apply then the Insured has insurable interest in the referenced organization(s).

#### 2. MAILING ADDRESS

3300 W. Beach Blvd.  
P.O. Box 1600  
Gulfport, MS, 39502

Gulfside Casino Partnership  
May 2019

### 3. POLICY PERIOD

In consideration of the premium stated herein, this Policy attaches and insures from **May 1, 2019 to May 1, 2020**, beginning and ending at 12:01 A.M. standard time, at the mailing address of the First Named Insured.

The actual effective time of attachment of this insurance on the above date shall be the same time as the actual effective time of cancellation or expiration of policy(ies) replaced or renewed by this Policy.

If property is in transit at the time this policy expires, coverage shall remain in force until the property reaches its destination and coverage would have ended had this policy remained in force

### 4. COVERAGE TERRITORY

This policy insures Covered Property in and between the United States of America including Hawaii, District of Columbia and Alaska; Territories and Possessions; including inter-coastal waters.

This policy also insures contingent time element and business personal property of the insured worldwide excluding those countries, individuals, or entities as to which coverage would be in violation of any U.S. economic or trade sanctions such as, but not limited to, those sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), unless the Insured has been granted a U.S. Treasury Department Office of Foreign Assets Control License or other expressed authorization by the U.S. Government to do business with that country, individual or entity, and then coverage is provided only to the extent legally permitted as a result of the issuance of the license or other expressed authorization, subject to all of the terms, conditions, and limitations found in this policy.

### 5. PROGRAM LIMIT OF LIABILITY

The Program Limit of Liability is the maximum limit of liability in any one Occurrence regardless of the number of locations or coverages. The Program Limit of Liability is **\$300,000,000**. This Program Limit of Liability is a blanket limit.

The Company insures 100% of the Program Limit of Liability unless a Participation Endorsement is attached to this policy.

In the event a Participation Endorsement is attached to this policy, then the participating Companies insure 100% of the Program Limit of Liability.

Gulfside Casino Partnership  
May 2019

## 6. TOTAL INSURED VALUES

The total insured values ("TIV") used solely for rating purposes of this policy at inception are: **\$526,090,438**. The TIV may be amended upward or downward during the policy period by an endorsement to this policy.

The premium for this policy is based upon the Statement of Values on file with the Insurer(s) and/or Company(ies) or attached to this policy.

## 7. INSURING AGREEMENT

This policy insures against all risks of direct physical loss, damage or destruction in the Coverage Territory to Covered Property due to Flood, Earth Movement (including Earthquake), Sprinkler Leakage, Named Storm, Wind, Hail, Wind Driven Rainwater including loss that results, ensues or arises from the foregoing and including general average, salvage and similar charges on shipments insured in this policy unless specifically excluded herein. This policy also insures time element loss in the Coverage Territory. Coverages specifically referenced herein are deemed to be examples of what this policy insures but does not limit the insurance provided by this policy.

## 8. SUB-LIMITS OF LIABILITY

- A. If a lesser dollar limit of liability is stated below or elsewhere in this policy, the lesser limit will apply. These Sub-Limits are part of the Program Limit of Liability and not in addition to the Program Limit of Liability.
- B. If coverage within this policy does not otherwise state a specific limit applies to that coverage, such as a Sub-Limit, then the Program Limit of Liability applies. If "included" is shown as a Sub-Limit, then the Program Limit of Liability applies.
- C. If a Sub-Limit shows "not covered" or "excluded" then no coverage shall exist for that particular coverage but a covered cause of loss resulting, ensuing or arising from that excluded coverage shall be insured.
- D. Limits and Sub-Limits do not include the amount of any applicable deductible. All Sub-Limits are ground up.
- E. As respects any excess insurance, a Sub-Limit showing "included," a time period such as days or any other qualifier that is not expressed in dollars are not deemed Sub-Limits for purposes of attachment by the excess insurance. Any excess insurance shall provide excess insurance for coverage noted in the Sub-Limits which show "included", a time period such as days or any other qualifier that is not expressed in dollars.
- F. If an Aggregate Limit is shown in a Sub-Limit below, then that Aggregate Limit will be the most that will be paid during the annual Policy Period for that coverage regardless of the number of Occurrences, Locations or Insureds. If this policy is a multi-year policy, the

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May 2019

Aggregate Limit shall apply to each twelve month period within the Policy Period commencing with the original effective date of this policy. If the second or subsequent term of the multi-year policy contains a period of time that is less than 1 year (12 months), then the Aggregate Limit shall be pro-rated for the period of time that is less than a 12 month period.

- G. Storm surge shall be considered Named Storm and not Flood. Flood sub-limits shall not reduce the Named Storm limit of insurance.

**Sub-Limits of Liability:**

Rejected	Terrorism – TRIA/TRIPRA
Not Covered	Boiler & Machinery/Equipment Breakdown – Per Accident, property damage and time element. All coverage insured in this policy applies to Boiler & Machinery/Equipment Breakdown subject to the following specific Sub-Limits (if any):
\$ 50,000,000	Earth Movement - Per Occurrence and Annual Aggregate EXCEPT: 1. Earthquake coverage is specifically excluded for the following states: California.
\$ 35,000,000	Flood – Per Occurrence and Annual Aggregate
\$300,000,000	Named Storm – Per Occurrence
\$ 50,000,000	Ordinance or Law: Coverage A – Undamaged Portion of the Building; Coverage B – Demolition of the Undamaged Portion of the Building; Coverage C – Increased Cost of Construction; and Coverage D – Increased Period of Restoration combined.
25%	Debris Removal & Cost of Clean-up – 25% of the property damage and time element loss or \$50,000,000 whichever is greater
\$ 1,000,000	Pollutant Clean-up and Removal - Land or Water – per Occurrence and Annual Aggregate
\$ 500,000	Decontamination Expense – Ordinance or Law – per Occurrence
Not Covered	Decontamination Expense – Other than Ordinance or Law – per Occurrence

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**Sub-Limits of Liability:**

\$25,000,000	Mold, Mildew, Fungus – property damage and time element loss when resulting or arising from a covered cause of loss – Per Occurrence and Annual Aggregate
\$ 2,500,000	Accounts Receivables – property damage and time element
\$ 5,000,000	Valuable Papers – property damage and time element
\$ 100,000	Property in Transit – property damage and time element
\$ 5,000,000	Electronic Data, Media, Programs, Software – property damage and time element
\$ 5,000,000	Leasehold Interest
\$50,000,000	Extra Expense
\$15,000,000	Expediting Expenses
Included	Rental Value
Not Covered	Reward Coverage
\$92,740,657	Business Income
\$ 2,500,000	Claim Preparation Expense / Professional Fees – Per Occurrence
\$ 5,000,000	Newly Acquired Property – property damage & time element. Property must be reported to the Company within 90 days.
\$ 5,000,000	Property in the Course of Construction – property damage & time element for rehabilitations, renovations and remodels of Covered Real Property.
Not Covered	Spoilage
Not Covered	Locks and Keys
\$10,000,000	Downzoning
\$ 1,000,000	Miscellaneous Unscheduled Locations – property damage and time element per Location

**Sub-Limits of Liability:**

Gulfside Casino Partnership  
May 2019

\$ 1,000,000	Contingent Time Element
\$25,000,000	Service Interruption on or off the premises – Property Damage and Time Element combined including transmission and distribution lines whether owned, non-owned or which an Insured is responsible for within 1,000 feet of the Insured Location.
30 Days	Ingress/Egress – not to exceed \$10,000,000
30 Days	Civil and Military Authority – not to exceed \$10,000,000
365 Days	Extended Period of Indemnity
60 Days	Interruption by the Casino Commissioner
30 Days	Ordinary Payroll
\$ 2,500,000	Computer Systems Non-Physical Damage
\$ 2,500,000	Deferred Payments
\$ 2,500,000	Fine Arts – property damage and time element
\$10,000,000	Errors or Omissions
\$ 1,000,000	Service Charges & Extinguishment Expenses
Not Covered	Data Restoration
Not Covered	Contract Penalties
Not Covered	Communicable Disease
Not Covered	Tax Liability – property damage and profits
\$ 4,000,000	Golf Course, Golf Course Property and Driving Range
\$ 1,000,000	Incentives
\$ 2,500,000	Green Property Enhancements



Gulfside Casino Partnership  
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**Sub-Limits of Liability:**

\$10,000,000	Cancellation Coverage
Not Covered	Inability to use food or beverage
\$ 5,000,000	Emergency Evacuation Expenses
Not Covered	Tenant or Guest Relocation Expenses
Not Covered	Destruction by Order of Civil Authority
Included	Wind Driven Rainwater – not due to Named Storm or Flood
Not Covered	Commissions, Profits & Royalties
Not Covered	Research and Development – Time Element

**9. DEDUCTIBLES**

All losses, damages or expenses arising out of any one Occurrence shall be adjusted as one loss regardless of the coverages, perils or number of Locations affected. Unless otherwise stated, the deductibles shown shall apply to property damage and time element combined. The amount of such adjusted loss shall be reduced by **\$250,000** EXCEPT:

**A. MISCELLANEOUS:**

\$10,000 per Occurrence property damage & time element combined for: trailers, maintenance equipment, golf carts, golf course property, driving range, dwelling or structures for all perils except Named Storm and Flood which shall be \$25,000 per Occurrence for property damage & time element combined.

**B. EARTH MOVEMENT**

\$250,000 Per Occurrence for property damage & time element combined

**C. FLOOD**

(1) \$250,000 per Occurrence for property damage & time element combined  
EXCEPT:

Gulfside Casino Partnership  
May 2019

(2) Flood in SFHA Zones A & V:

- (a) \$15,000,000 per Occurrence for property damage & time element combined to scheduled buildings located wholly or partially within the Special Flood Hazard Areas (SFHA) Zones A & V as defined by the Federal Emergency Management Agency (FEMA). The SFHA deductible applies only to the following locations:

- a) 3300 West Beach Blvd, Gulfport, MS, 39501
- b) 3215 West Beach Blvd, Gulfport, MS, 39501
- c) 3206 West Beach Blvd, Gulfport, MS, 39501
- d) 3305 West Beach Blvd, Gulfport, MS, 39501

- (3) The maximum deductible in any one Occurrence is \$15,000,000 for property damage & time element combined for all locations.

- (4) The Insured shall have the right, but not the duty, to insure property with the National Flood Insurance Program (NFIP) to satisfy their deductible requirement.

- (a) In the event the Insured purchases insurance through the NFIP, it is agreed this policy excludes the peril of flood to the extent of recovery under the NFIP.

If Flood loss (in whole or in part) is not recoverable under the NFIP, but would be recoverable under this policy, then such loss will be insured under this policy subject to the deductible provisions of this policy.

- (b) Should the amount of loss recovered under the NFIP exceed the applicable Flood deductible under this policy, then no deductible shall apply in this policy.

- (c) However, if the amount recovered under the NFIP is less than the applicable Flood deductible under this policy then the amount recovered by the NFIP shall become the Flood deductible under this policy.

- (d) Insurance maintained through the NFIP shall be considered Underlying Insurance.

- (e) For purposes of determining (b) and (c) above, the total amount recovered under NFIP shall be calculated per Occurrence regardless of the number of NFIP policies issued to the Insured.

D. NAMED STORM

- (1) \$250,000 per Occurrence for property damage & time element combined  
EXCEPT:

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May 2019

- (2) \$15,000,000 per Occurrence for property damage & time element combined at Locations within Tier 1 Zones as defined herein.
- (3) The maximum deductible for Named Storm per Occurrence for property damage & time element combined is \$15,000,000 regardless of where or how many locations are involved.

E. ALL OTHER WINDSTORM & HAIL:

\$250,000 Per Occurrence for property damage & time element combined.

F. DEDUCTIBLE REIMBURSEMENT

It is understood and agreed the deductible(s) described elsewhere in this policy shall not apply to loss or damage to Covered Real Property at any Insured Location under this policy and specified on a certificate of insurance where a mortgagee interest or third party obligation requires a smaller deductible amount, in which case the smaller deductible amount will apply. It is agreed that as a condition of this modification, the Insured shall simultaneously reimburse the Company for the difference between the lower deductible amount certificated and the deductible(s) described elsewhere in this policy if any loss payment is made by the Company.

G. UNIT OF INSURANCE

The following shall be considered a separate Unit of Insurance for purposes of applying deductibles based on a percentage:

1. Each building or structure;
2. Personal property of each building or structure;
3. Inventory of each building or structure;
4. Property in each yard; and
5. Business interruption as defined for the twelve month period immediately following the loss.

As respects any other Time Element loss, no deductible shall apply except as outlined in (1) – (5) above.

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#### H. APPLICATION OF DEDUCTIBLES

1. If two or more deductible amounts in this policy apply to a single Occurrence, the total cumulative deductible(s) to be deducted shall not exceed the single largest deductible.
2. In any single Occurrence where loss or damage is caused by more than one peril insured under this policy, the Insured shall have the right to separate the loss amount by the peril for the purposes of application of the deductible(s) specified in this section.
3. In the event all or any portion of the deductible is payable under the Insured's primary insurance or by local, state or governmental funding organizations, such payment shall be considered Underlying Insurance.
4. The deductible amounts shall not apply to general average contributions, salvage charges or sue and labor expenses.
5. If covered loss or damage by Flood arises out of or contributes with a Named Windstorm, then the Company shall apply the Flood deductible or the Named Windstorm deductible, whichever is greater but in no event shall both deductibles apply to an Occurrence.
6. Time element values shall not be included in the calculation of any Occurrence Deductible at any location for which no time element claim is made.
7. Property damage values shall not be included in the calculation of the Occurrence Deductible at any location for which no property damage claim is made.
8. Subject to (H) (1) above, in no event shall deductibles in this policy stack in any one Occurrence unless specifically described elsewhere in this policy.
9. If a loss for which a claim is made does not involve property or time element values evidenced in the Statement of Values on file with the Company, then the deductible that applies to the loss shall be the All Other Perils Deductible regardless of which peril(s) caused the loss. By way of example – a sub limit of insurance is triggered for coverage but no claim for property damage or time element evidenced in the Statement of Values is made.

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#### I. QUALIFYING PERIODS

No liability shall exist for any of the following coverages until the following periods of time are exceeded. Once the period of time is exceeded, the date of loss shall be the date of the Occurrence and applicable deductibles shall apply.

72 hours Time Element  
24 hours Computer Non-Physical Damage  
24 hours Service Interruption

No qualifying period shall apply to Extra Expense, Expediting Expense or Expense to Reduce Loss.

#### J. Definitions of Earthquake Zone Counties:

(1) New Madrid Earthquake Zone Counties defined as follows:

State	Counties
Arkansas	Clay, Craighead, Crittenden, Cross, Greene, Jackson, Lawrence, Mississippi, Poinsett, Randolph, Sharp
Illinois	Alexander, Bond, Clinton, Franklin, Hardin, Jackson, Jefferson, Johnson, Madison, Massac, Monroe, Perry, Pope, Pulaski, Randolph, St. Clair, Saline, Union, Washington, Williamson
Indiana	Gibson, Pike, Posey, Vanderburgh, Warrick
Kentucky	Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingston, Marshall, McCracken
Mississippi	Bolivar, Coahoma, DeSoto, Marshall, Tate, Tunica
Missouri	Bollinger, Butler, Cape Girardeau, Dunklin, Franklin, Iron, Jefferson, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, St. Charles, St. Francois, St. Genevieve, St. Louis, Scott, Stoddard, Warren, Washington, Wayne
Tennessee	Crocket, Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, Madison, Obion, Shelby, Tipton

(2) Pacific Northwest Earthquake Zone Counties defined as follows:

State	Counties
Washington	Clallam, Jefferson, King, Kitsap, Mason, Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom

Gulfside Casino Partnership  
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- K. It is agreed that all reference to "Tier 1," or "Tier 1 Named Storm" or other similar "Tier 1" references, shall be defined as all locations situated within Tier 1 Counties, Parishes or Independent Cities as classified below:

State	Counties
Alabama	Baldwin, Mobile
Florida	Entire State of Florida
Georgia	Bryan, Camden, Chatham, Glynn, Liberty, McIntosh
Hawaii	Entire State of Hawaii
Louisiana	Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. Mary, St. Tammany, Terrebonne, Vermilion
Mississippi	Hancock, Harrison, Jackson
North Carolina	Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, Washington
South Carolina	Beaufort, Charleston, Georgetown, Horry, Jasper
Texas	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, Willacy

## 10. LOSS PAYABLE

Except as otherwise stated in the Mortgagee / Lender's Loss Payable and Loss Payee Clauses, loss under this policy shall be adjusted with and payable to the Named Insured or their order, unless endorsed otherwise hereon.

## 11. COINSURANCE AND MARGIN CLAUSES

Do not apply to this policy.

## 12. PREMIUM ADJUSTMENTS

### A. Newly Acquired Locations

No adjustment in premium shall be made unless the values so reported represent an increase of five percent (5%) or more over the total values declared at inception. If the



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values do exceed such percentage, the Company agrees to charge pro-rata (as to time and value) additional premium.

**B. Divested Location or Schedule of Locations**

No adjustment in premium shall be made unless the values so reported represent a decrease of five percent (5%) or more over the total values declared at inception. If the values exceed such percentage, the Company agrees to use a pro-rata (as to time and value) return premium.

**13. COVERAGE**

**A. COVERED PROPERTY:**

This policy insures the following property for loss, damage or destruction, unless otherwise specifically excluded, while located in the Coverage Territory.

- 1. REAL PROPERTY** of every kind and description whether above or below ground or water that is owned, used, leased, rented, borrowed, loaned, occupied or intended for use by an Insured in which an Insured may have an insurable interest including, but not limited to, the following and including the loss of use thereof. It is agreed and understood that the determination of insurable interest shall not be less than that allowed by law.
  - a. Buildings; structures; land improvements; foundations and permanent fixtures such as fences including motorized gates or fences, signs, lighting; paved and cement surfaces; playground equipment; roadways/walkways; cart paths; ball washers; charging stations; tanks; retaining walls; decks; wharfs; docks; piers; jetties; seawalls; bulkheads; pilings; bridges; tennis courts; skating rinks; equestrian facilities; patios; pools/spas/decking/water features and all related equipment and pumps; underground pipes/flues/drains and irrigation systems or equipment;
  - b. Newly constructed, erected, acquired, remodeled, renovated, rehabilitated or installed real property;
  - c. Improvements and betterments including undamaged improvements and betterments, when the Insured is a Lessor;
  - d. Real property of others, including loss of use, whether or not in the care, custody or control of an Insured if the Insured is under obligation to keep the property insured for physical loss or damage.

In addition, real property in the care, custody or control of an Insured when the Insured is legally liable for the physical loss or damage of such real property.

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The Company shall defend that portion of any claim or suit against an Insured that alleges legal liability and seeks damages for such physical loss or damage. The Company may without prejudice investigate, negotiate and settle any claim or suit as the Company deems expedient. However, such negotiation and settlement will be subject to reasonable recommendations of the Insured if the loss is substantially settled within the deductible.

- e. Equipment and machinery permanently attached including parts and components of such; machinery and equipment that generates, transmits, or uses energy; boiler pressure vessels; related piping; and any other machinery or equipment used in any part of an Insured's operations. Machinery and equipment includes any specialized machinery or equipment used in an Insured's operations.
- f. Real property for which a sale to the Insured is pending and the Insured has agreed in a sales or purchase agreement to insure such property.
- g. "All-in" Property – Covered Property includes any of the following types of property contained within a "unit," regardless of ownership.
  - (1) Fixtures, improvements and alterations (including floor coverings, paint and window treatments) that are part of the building or structure; and
  - (2) Appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping.

But building does not include personal property owned or in the care, custody and control of a unit owner except for personal property listed above.

In addition, Covered Property includes any other property described in a contract, agreement, charter, by-laws or similar document as being the responsibility of an Insured.

For purposes of this provision, "unit" is defined pursuant to the contract, agreement, charter, by-laws or similar document governing the unit.

**2. PERSONAL PROPERTY** of every kind and description that is owned, used, leased, rented, borrowed, loaned, occupied or intended for use by an Insured in which an Insured may have an insurable interest including, but not limited to the following and including loss of use thereof. It is agreed and understood that the determination of insurable interest shall not be less than that allowed by law.

- a. Insured's tenant improvements and betterments including undamaged improvements and betterments. In the event of loss, the Company agrees to accept and consider the Insured as the sole and unconditional owner of the improvements and betterments, regardless of any contract or lease to the contrary.

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- b. At the option of an Insured, personal property and effects of officers, directors and employees while on premises of the insured. This insurance shall then act as primary insurance.
- c. Equipment and machinery not permanently attached, including but not limited to machinery and equipment that generates, transmits, or uses energy; boilers, pressure vessels; all related piping, equipment of such and including all equipment and machinery in any part of an Insured's operations; contractors equipment and mobile equipment. Machinery and equipment, not permanently attached, shall also include specialized machinery or equipment used in an Insured's operations.
- d. Vehicles and conveyances that service the premises.
- e. Research and development property.
- f. Stock, inventory, finished goods, raw materials and stock in progress.
- g. Electronic equipment, data; media; programs; software; and databases including but not limited to block chain.
- h. Personal property of others, including property of guests, whether or not in an Insured's care, custody or control to the extent an Insured is under obligation to keep the property insured for physical loss or damage OR for which the insured is legally liable for or legally liable to insure.

The Company shall defend that portion of any claim or suit against an Insured which alleges such liability and seeks damages. The Company may, without prejudice, investigate, negotiate and settle any claim or suit as the Company deems expedient. However, such negotiation and settlement will be subject to reasonable recommendations of the Insured if the loss is settled substantially within the deductible.

- i. Newly acquired personal property of the kind described herein anywhere in the Coverage Territory.

**3. CONTRACTORS, VENDORS, SUBCONTRACTORS:** This policy also insures the interest of contractors, vendors and subcontractors in Covered Property during improvements and betterments, renovations, rehabilitations, remodels, construction of new additions, installations, and new construction anywhere in the coverage territory to the extent of the Insured's legal liability for such.

The contractor and subcontractor's interest shall include costs of labor. Such interest of contractors and subcontractors is limited to the property for which they have been hired to perform work. Such interest shall not extend to Time Element coverage unless the Insured has agreed by contract to insure such.

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**4. INSURED LOCATION** means a Location:

- (1) Scheduled on this policy; or
- (2) Listed on a schedule of locations attached to this policy; or
- (3) Listed on a schedule on file with the Company; or
- (4) Where property is in the course of construction, erection, installation, assembly; or
- (5) Insured as a miscellaneous unscheduled location; or
- (6) Insured under the terms and conditions of the Newly Acquired Location Coverage or the Errors and Omissions provision; or
- (7) Is a Location otherwise insured herein that is not described above.

For purposes of (1) – (7) above, the Location may be located anywhere within the Coverage Territory.

Insured location shall include any adjacent area to an Insured Location referenced above if temporary occupancy of the adjacent area, or temporary passage over the adjacent area, is required to perform dredging or related work at an Insured Location.

**B. COVERAGES**

This policy insures all risks of direct physical loss including but not limited to the following coverages outlined herein unless otherwise excluded. All insurance provided in this policy is subject to the Program Limit of Liability unless there is a specific Sub-limit of insurance for such coverage. It is agreed and understood that time element loss including but not limited to business interruption, extra expense and rental value are included when there is any loss, damage or destruction to Covered Property by a covered cause of loss whether or not the coverage outlined specifically refers to time element.

**1. BUSINESS INTERRUPTION – GROSS EARNINGS**

- (a) Business Interruption means loss resulting from the necessary interruption or reduction of business operations or services conducted by an Insured and unless stated otherwise herein is caused by direct physical loss, damage or destruction to Covered Property or property of the type insured hereunder, by any of the covered causes of loss insured by this policy.
- (b) Business Interruption shall be adjusted on the basis of the actual loss sustained by the Insured due to interruption or reduction of business operations and shall consist of Gross Earnings less charges and expenses which do not necessarily continue during the interruption or reduction of

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business operations. There shall be consideration given to the continuation of normal charges and expenses,

including payroll expense, to the extent necessary to resume operations of the Insured with the same quality of operations which existed immediately before the loss.

Gross Earnings is defined as:

- (a) the net sales value of production from manufacturing operations, and net sales from merchandising or non-manufacturing operations; and
- (b) any other earnings derived from the operations of the business by the Insured.

Less the Cost of:

- (a) raw stock from which such production is derived;
- (b) supplies consisting of materials consumed directly in the conversion of such raw stock into finished stock or in supplying the services sold by the Insured;
- (c) merchandise sold, including packaging materials therefore; and
- (d) services purchased from others (not including employees of the Insured) for resale which do not continue under a contract or agreement.

No other costs shall be deducted in determining Gross Earnings.

- (c) Payroll is included and defined to be the payroll expenses for all employees, managers, executives, directors and officers of an Insured including seasonal, leased and temporary employees.
- (d) The Company shall be liable for loss resulting from the time required to reproduce finished stock. Finished stock shall mean stock manufactured by the Insured, or on behalf of the Insured, which in the ordinary course of the Insured's business is ready for packing, shipment, or sale and also while in transit in the Covered Territory.
- (e) RESUMPTION OF OPERATIONS: If the Insured could reduce the loss resulting from the interruption of business,
  - (1) by a complete or partial resumption of operations at a location owned by the same entity suffering the loss, whether damaged or not; or
  - (2) by making use of other available stock, merchandise or similar property;

then such reduction will be taken into account in arriving at the amount of loss hereunder.

- (f) EXPERIENCE OF BUSINESS: In determining the amount of loss covered hereunder due consideration shall be given to the experience of the Insured's business before the period of interruption and to the "probable experience thereafter" had no



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interruption or suspension of operations or services occurred including but not limited to consideration of economic impact of the region in the event of a disaster or catastrophe. Factors to determine the "probable experience thereafter" can include, but are not limited to: detailed projections of earnings; nature of the business; earnings calculation methods used in the business; business plans.

- (g) Business Interruption includes the actual loss sustained by an Insured due to dredging and related work at an insured location as a result of a covered cause of loss.
- (h) If a covered loss could be insured by both business interruption and another time element coverage insured herein, the Insured shall have the right to determine which time element coverage will apply.

## **2. EXTRA EXPENSE**

This policy insures the excess cost necessarily incurred by an Insured to continue the operation of the Insured's business or facility that would not have been incurred had there been no loss or damage by any of the covered causes of loss insured herein during the term of this policy to Covered Property.

Extra Expense includes the costs and expenses incurred by an Insured associated with dredging and related work at an Insured Location as a result of a covered cause of loss.

## **3. EXPEDITING EXPENSE**

This Policy insures the reasonable and necessary cost to make temporary repair, expedite permanent repairs and expedite permanent replacement of Covered Property, which has sustained loss or damage by a covered cause of loss, including additional wages for overtime, night work, work on public holidays, and the extra cost of express or other rapid means of transportation.

This does not cover costs:

- (1) recoverable elsewhere in this Policy; or
- (2) of permanent repair or replacement of damaged property.

Expediting Expenses include the costs and expenses incurred by an Insured associated with dredging and related work at an Insured Location as a result of a covered cause of loss.

## **4. RENTAL VALUE**

- (1) Rental Value means the loss sustained by an Insured resulting directly from the necessary untenability in whole or in part, during the Period of Restoration, caused by loss, damage or destruction by a covered cause of loss that occurred



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during the Policy Period to Covered Property but not exceeding the reduction in rental value less charges and expenses which do not necessarily continue during the period of untenability.

(2) For the purpose of this insurance "Rental Value" is defined as the sum of:

- (a) The total anticipated gross rental income from tenant occupancy of the described property as furnished and equipped by the Insured according to bona fide leases, contracts or agreements in force at the time of the loss, and
- (b) The income reasonably expected from rentals of unoccupied or unrented portions of such property; and
- (c) The amount of all charges which are the legal obligation of the tenant(s) and which, because of the loss, become obligations of the Insured; and
- (d) The fair rental value of any portion of said property which is occupied by the Insured.

For purposes of Rental Value Coverage, depreciation shall not be considered a non-continuing expense or charge because it is agreed and understood that depreciation is an accounting function for tax purposes and is not an out of pocket cash expense.

(3) When an Insured is a lessee, this policy insures:

The rent the Insured is obligated to pay including ground rents, accrued charges, real estate taxes and interest if the Insured is liable for such, less charges and expenses that do not necessarily continue during the Period of Restoration. However, if an Insured is obligated by the terms of any lease to pay rent and taxes for any time beyond the Period of Restoration of this policy, this policy insures such additional payments.

(4) **EXPERIENCE OF THE BUSINESS:** In determining the amount of Rental Value covered hereunder for the purpose of ascertaining the amount of loss sustained, due consideration shall be given to the rental experience before the period of interruption and to the probable experience thereafter had no interruption or suspension of operations or services occurred including but not limited to consideration of economic impact of the region in the event of a disaster or catastrophe. Factors to determine the "probable experience thereafter" can include, but are not limited to: the type of unit damaged (such as like kind & quality, size and view); detailed projections of rental value; nature of the business; rental value calculation methods used in the business; business plans.

## **5. LEASEHOLD INTEREST**

(a) Pro rata proportion from the date of loss to expiration date of the lease (to

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be paid without discount) on the Insured's interest in:

- (1) the amount of bonus paid by the Insured for the acquisition of the lease not recoverable under the terms of the lease;
- (2) improvements and betterments to real property which are not covered under any other section of this policy;
- (3) the amount of advance rental paid by the Insured and not recoverable under the terms of the lease;

when property is rendered wholly or partially untenable by any covered loss during the term of this policy and the lease is canceled by a party not insured under this policy in accordance with the conditions of the lease or by statutory requirements of the appropriate jurisdiction in which the damaged or destroyed property is located.

(b) In addition:

- (1) "The Interest of the Insured as Lessee or Lessor" when property is rendered wholly or partially untenable by any covered loss during the term of this policy and the lease is canceled by the party who is not the Named Insured of this policy in accordance with the conditions of
  - i. the lease or by statutory requirements of the appropriate jurisdiction in which the damaged or destroyed property is located.
- (2) "The Interest of the Insured as Lessee or Lessor" as referred to herein shall be paid for the first six months succeeding the date of the loss and the "Net Lease Interest" shall be paid for the remaining months of the unexpired lease.
- (3) Notwithstanding the conditions stipulated under (5)(a) and (5)(b) above, in the event:
  - (a) property is rendered wholly untenable by any insured loss during the term of this policy; and
  - (b) the lease cannot be cancelled due to conditions contained therein; or the lessor is unable to cancel the lease without the consent from a third party; or the lessor's failure to cancel the lease is unreasonable under the circumstances; and
  - (c) the Insured is unable to reoccupy or conduct business of the type which existed prior to the direct physical loss, damage or destruction within said untenable property within a period of time to rebuild as prescribed by the lease following such direct physical loss, damage or destruction, then the Insured, nevertheless, shall have the benefit of this provision 5 as if said lease had been cancelled.

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(c) Definitions:

The following terms, wherever used in this section shall mean:

- (1) "The Interest of the Insured as Lessee" is defined as:
    - (a) the excess of the rental value of similar premises over the actual rental payable by the lessee (including any maintenance or operating charges paid by the lessee) during the unexpired term of the lease; and
    - (b) the rental income earned by the Insured from sublease agreements, to the extent not covered under any other section of this policy, over and above the rental expenses specified in the lease between the Insured and the lessor.
  - (2) "The Interest of the Insured as Lessor" is defined as the difference between the rents payable to the lessor under the terms of the lease in effect at the time of loss and the actual rent collectible by the lessor during the unexpired term of the lease provided the lease is canceled by the lessee, to the extent not covered under any other section of this policy.
  - (3) "Net Lease Interest" is defined as that sum, which placed at the prime rate of interest plus 3% interest compounded annually will be the equivalent to the "The Interest of the Insured as Lessee or Lessor" where allowed by law.
- (d) This Company shall not be liable for any increase of loss which may be occasioned by the suspension, lapse or cancellation of any license or by the Named Insured exercising any option to cancel the lease. Further-more, the Named Insured shall use due diligence including all things reasonably practicable to diminish loss under this clause.
- (e) For purposes of this provision, a lease shall include any Covered Real Property and 13(A)(2)(c) of Covered Personal Property except for mobile equipment and contractors equipment.

**6. COMMISSIONS, PROFITS AND ROYALTIES**

- A. This policy insures the following loss to an Insured based on the Business Interruption's Actual Loss Sustained incurred by the Insured during the Period of Restoration.
- (1) Commissions, Profits and Royalties;
  - (2) Less non-continuing expenses and charges during the Period of Restoration.

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B. The Commissions, Profits and Royalties payable hereunder will be the Business Interruption's Actual Loss Sustained of income to the Insured during the Period of Restoration under any royalty, licensing fee or commission agreement between the Insured and another party which is not realizable due to physical loss or damage insured by this policy to property of the other party of the type insured by this policy located within the Coverage Territory.

C. The Insured will attempt to influence, to the extent possible, said party(ies) with whom the agreements described above have been made to use any other

machinery, supplies or locations in order to resume business so as to reduce the amount of loss hereunder, and the Insured will cooperate with that party in every way to effect this. This policy does not cover any cost to effect the above unless authorized in advance by the Company.

D. In determining the amount payable hereunder, the Company will consider the amount of income derived from such agreements before and the probable amount of income after the date of loss or damage.

E. The SPECIAL EXCLUSIONS for time element do not apply to Commissions, Profits and Royalties.

F. Definitions:

1. Commissions: The income that would have been received by an Insured from the sale of goods, not owned by the Insured.
2. Profits: The amount that would have been received by the Insured from the sale of goods belonging to the Insured, in excess of the cost to the Insured of such goods.
3. Royalties: The income the Insured is not able to collect under a royalty or Licensing agreement.

## 7. PERIOD OF RESTORATION:

A. Period of restoration means the period of time that:

- (1) Begins with the date of direct physical loss or damage to property by any of the covered causes of loss herein; and
- (2) Ends on the date when the property should be repaired, rebuilt or replaced with reasonable speed and similar quality.
- (3) It is agreed the Period of Restoration shall include:
  - (a) the time needed by the Company(ies) to adjust the loss; and

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- (b) any delay attributable to a failure by the Company(ies) to adjust the loss under the policy within a reasonable amount of time.

At the option of the Insured, and if allowed by law, the Insured may choose to toll the Period of Restoration in the event the Insured invokes Section 13(E)(12) Suit Against the Company and the invocation is the result of the loss which activated the Period of Restoration provision.

- B. In the event of an occurrence that affects the community such as a tornado, flood, named storm, terrorism or earthquake, the Period of Restoration will take into consideration the impact to the community in determining when the property should have been repaired, rebuilt or replaced.

- (1) If the property was being constructed, tested, erected, installed or assembled the provisions above apply but the length of time shall be applied to the probable level of production or the probable level of business operation.

- (2) The term "property" used in this provision is not limited to Covered Property of an Insured.

- C. Period of restoration includes, but is not limited to, the time necessary to:

- (1) Recreate lost, damaged or destroyed Valuable Papers & Records;
  - (2) Recreate lost, damaged or destroyed electronic data and media;
  - (3) Obtain green certification, if applicable;
  - (4) Implement and execute any Coverage or Valuation provision in this policy.

In the event the Insured is not operating at pre-loss levels when the Period of Restoration ends, the Insured shall have an additional 60 days.

The expiration date of this policy will not cut short the period of restoration.

## 8. INGRESS/EGRESS:

This policy insures Time Element incurred by an Insured due to the necessary interruption, whether in whole or in part, of the Insured's business or services due to impairment of ingress or egress to/from an Insured Location, other than ingress or egress due to civil or military authority, whether or not the premises or property of the Insured is damaged, provided that such impairment is a direct result of a cause of loss insured by this policy.

This coverage is extended to apply to Contingent Time Element for suppliers, customers and attraction properties in the United States of America including Hawaii, District of Columbia and Alaska; Territories and Possessions.

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Coverage ends when the number of days shown in the Sub-Limits, if any, has been exceeded.

No Qualifying Period applies to this provision.

The expiration date of this policy will not cut short the period for Ingress/Egress.

#### **9. CIVIL/MILITARY AUTHORITY:**

This policy insures the Time Element incurred by an Insured due to the necessary interruption, whether in whole or in part, of the Insured's business or services due to impairment of ingress or egress to/from an Insured Location by a Civil, Government or Military Authority, whether or not the premises or property of the Insured is damaged, provided that such impairment is a direct result of a cause of loss insured by this policy.

The Insured may rely on a Civil, Government or Military's apparent authority even if it is ultimately determined the Civil, Government or Military Authority did not have authority to act.

This coverage is extended to apply to Contingent Time Element for suppliers, customers and attraction properties in the United States of America including Hawaii, District of Columbia and Alaska; Territories and Possessions.

Coverage ends when the number of days shown in the Sub-Limits, if any, has been exceeded. It is agreed and understood that multiple actions by a Civil, Government or Military Authority can take place in any Occurrence. The number of days shown in the Sub-Limits apply to each action.

No Qualifying Period applies to this provision.

The expiration date of this policy will not cut short the period for Civil/Military Authority.

#### **10. RESEARCH AND DEVELOPMENT:**

Time Element is extended to insure the Actual Loss Sustained by the Insured of continuing fixed charges and ordinary payroll directly attributable to the interruption of research and development activities that in themselves would not have produced income during the Period of Restoration. The Period of Restoration for this coverage will be the period from the time of direct physical loss or damage of the type insured by this policy to the time when the property could be repaired or replaced and made ready for operations, but not be limited by the date of expiration of this policy.



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#### 11. CONTINGENT TIME ELEMENT:

If physical loss or damage to the real or personal property of a direct supplier or customer of the Insured is damaged by a covered cause of loss under this Policy, and such damage:

- (a) Wholly or partially prevents any supplier to the Insured from supplying their goods and/or services to the Insured, or
- (b) Wholly or partially prevents any customer of the Insured from accepting the Insured's goods and/or services;
- (c) Including property of others of the type insured in this policy in the vicinity of a Location of an Insured that attracts customers to an insured Location.

Then this policy is extended to cover the actual loss sustained by the Insured during the Period of Interruption with respect to such real or personal property. The property of the supplier or customer which sustains loss or damage must be of the type of property which would be Insured Property under this Policy.

The property of the supplier, customer or attraction property which sustains loss or damage must be of the type of property which would be Covered Property under this Policy.

It is agreed a supplier, vendor or attraction property can be a subsidiary or related company of an Insured. However, for Contingent Time Element coverage to apply, the subsidiary/related company must have separate property insurance from this policy.

This coverage is subject to all Time Element provisions including civil/military authority, ingress/egress and service interruption.

#### 12. EXTENDED PERIOD OF INDEMNITY

The time element coverage is extended to cover the reduction in sales or income plus extra expenses resulting from:

- (a) The interruption of business as covered by 13(B)(1) Business Interruption, 13(B)(2) Extra Expenses, 13(B)(3) Expediting Expenses and 13(B)(4) Rental Value;
- (b) for such additional length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss occurred; and

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- (c) commencing with the date on which the liability of the Company for loss resulting from interruption of business would terminate if this Extension had not been included herein.

Coverage for the reduction in sales due to contract cancellation will include those sales that would have been earned under the contract during the extended period of liability.

Coverage does not apply for more than the number of consecutive days shown in the Sub-Limits clause of the Declarations section.

This provision applies subsequent to the 60 day extended period in the Period of Restoration and not concurrently with it.

The expiration date of this policy will not cut short the period of restoration.

### 13. COURSE OF CONSTRUCTION

- A. This policy is extended to insure the remodel, rehabilitation, renovation of Covered Property including infrastructure, landscaping, materials, and including machinery and equipment permanently installed therein. This policy also insures property to be used in the course of construction while at offsite storage locations.

For purposes of this provision, infrastructure shall include land development associated with golf courses such as fairways, greens, tee boxes, sand traps, ponds and similar land development. Coverage shall also include hot and cold testing of equipment.

- B. This policy will pay for loss resulting from a delay in completion, delay in work, delay in opening, and delay in start-up of a construction or installation project and/or soft costs resulting from loss, damage, or destruction by a covered cause of loss during the policy period to Covered Property including such property while in transit.

- C. Recovery in the event of loss in 13(B) above shall be the actual loss sustained by the Insured consisting of:

- (1) the amount of actual interim or construction financing interest, including loan fees and other one-time charges, which exceeds the interest that would have been incurred had no delay resulted;
- (2) realty taxes and ground rent if any;
- (3) advertising and promotional expenses;
- (4) cost of additional commissions incurred upon renegotiating leases;
- (5) architects, surveyors, legal, accounting, consulting engineers, consultants, or other fees;

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- (6) project administration expense;
  - (7) insurance premiums;
  - (8) additional leasing expenses;
  - (9) additional operating expenses.
- D. In the event the construction contract for such property contains a penalty clause providing for payments to the Insured for a delay in the completion, delay in startup or delay in opening, any portion of such penalty inures to the benefit of the Insured shall be taken into consideration in the settlement of any loss hereunder.

#### **14. EXPENSE TO REDUCE LOSS**

Except as respects Extra Expense, this policy insures expenses necessarily incurred for the purpose of reducing any Time Element loss, not to exceed the amount by which such Time Element loss is reduced.

#### **15. INTERDEPENDENCY TIME ELEMENT**

This policy insures Time Element interdependency loss sustained within and among any Insured caused by direct physical loss, damage or destruction by a covered cause of loss.

#### **16. INCENTIVES**

This policy insures renewable energy credits which would have otherwise been due to an Insured or any other similar credits or incentives lost or reduced because of an Occurrence to which no exclusion in this policy applies.

#### **17. CANCELLATION COVERAGE**

This policy is extended to insure the Time Element loss incurred by an Insured resulting from the cancellation of, and/or inability to accept bookings or reservations for accommodations, receive admissions, and/or interference with the business at any insured Location all as a result of the Occurrence of the following whether or not physical damage occurs to property of the Insured or regardless of whether caused by or resulting from loss, damage or destruction from a covered cause of loss:

- (a) Violent crime at or within 5 miles of an insured Location;

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- (b) suicide at an insured Location;
- (c) a contagious or infectious disease at an insured Location, as determined by a public or civil authority, that affects persons or premises;
- (d) food or drinking contamination affecting an insured Location;
- (e) any of the following that occur within a radius of 15 miles of an insured Location, to the extent such Time Element loss is not otherwise insured elsewhere in this policy;
  - (1) outbreak of a contagious and/or infectious disease as determined by a public or civil authority;
  - (2) outbreak of riot/rebellion, civil commotion or strike;
  - (3) occurrence of fire, explosion, named storm, tornado, flood, terrorism, earthquake or other catastrophic event;
  - (4) closure of a seaport or airport;
- (f) closing in whole or in part of an insured Location either by the Insured or by a civil authority due to the existence or threat of hazardous conditions either actual or suspected at an insured Location;
- (g) the pollution by oil, chemical or other substance of any beach, waterway or river within a radius of 50 miles of an insured Location as a result of loss, damage, or destruction not otherwise excluded;

Coverage in this provision shall not conflict or reduce coverage provided elsewhere in this policy.

#### **18. INABILITY TO USE FOOD OR BEVERAGE**

If direct physical loss to Covered Property from a covered cause of loss results in the loss, suspension or revocation of a license or permit because an Insured cannot serve food or beverage, then this policy will pay for the time element loss the Insured incurs as a result of that loss, suspension or revocation of the license or permit.

#### **19. EMERGENCY EVACUATION EXPENSES**

This policy is extended to insure the reasonable expenses, including goodwill and public relation expenditures incurred by an Insured from the evacuation of:

- (a) Residents and Tenants;
- (b) Lawful occupants

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- (c) Guests
- (d) Employees

from an Insured Location as a result of an immediately impending insured cause of loss that threatens imminent physical danger or loss of life. Such expense includes temporary housing and transportation within a reasonable but safe distance from the insured Location.

It is agreed and understood that physical damage to an Insured Location is not required.

No coverage is provided if the vacating results from a planned evacuation drill.

## 20. TENANT OR GUEST RELOCATION EXPENSE

This policy is extended to insure the reasonable expenses, including goodwill and public relation expenditures incurred by an Insured from the evacuation of:

- (a) Residents and Tenants; or
- (b) Lawful occupants

to other quarters in the shortest possible time when rented space or living quarter(s) at an insured Location are made uninhabitable as a direct result of physical loss or damage from a covered cause of loss. This policy shall also cover the reasonable expenses incurred by the insured to relocate the tenant, resident or lawful occupant back to the Location covered under this policy.

Coverage includes the reasonable and necessary expense of:

- (a) Packing, sorting and transportation cost for personal property;
- (b) Reestablishing new utility services, less refunds from discontinued services, at the damaged location;
- (c) Disconnecting and reconnecting fixtures and equipment; and
- (d) Storage costs while awaiting possession of other quarters or restoration of existing quarters.

No coverage is provided for:

- (a) Loss caused by the termination of a lease or other agreement;
- (b) Security deposits or other payments made to the landlord or lessors of the new quarters;
- (c) Down payments, legal fees and closing costs for the purchase or new quarters.

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## 21. VALUABLE PAPERS AND RECORDS

This policy shall insure Valuable Papers and Records of an Insured including Valuable Papers and Records of others in an Insured's care, custody and control and including transit.

Valuable papers and records, shall mean written, printed or otherwise inscribed plans, blueprints, photographs, specifications, documents and records, and including but not limited to books, maps, films, drawings, abstracts, deeds, mortgages, micro inscribed documents, manuscripts and media, but not including Electronic Data Processing Data or Electronic Data Processing Programs, or money and/or securities.

The term securities shall mean all negotiable and non-negotiable instruments or contracts representing either money or other property and includes revenue and other stamps in current use, tokens and tickets, but does not include money.

## 22. ACCOUNTS RECEIVABLE

This policy shall insure Accounts Receivables of an Insured.

Accounts Receivable shall mean property of the Insured that constitutes records of debts owed to the Insured and that deprives the Insured of the ability to collect those debts, provided that this inability does not result from an error in bookkeeping, accounting or billing. The insured interest includes but is not limited to:

- (a) The amount(s) due the Insured from customer(s), provided the Insured is unable to effect collection thereof as the direct result of Damage to records of accounts receivable;
- (b) Interest charges on any loan taken by the Insured during the period of adjustment hereunder made uncollectible by such Damage;
- (c) Additional collection expense that would not have been incurred but for the Damage; and
- (d) Expenses reasonably incurred by the Insured in recreating physical records of accounts receivable following such Damage.

For the purpose of this definition only, credit card company charge records shall be deemed to represent sums due the Insured from customers, provided that such charge records had not been delivered to the credit card company at the time of Damage.

When there is proof that a loss of records of accounts receivable has occurred but the Insured cannot more accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be computed as follows:



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- (a) The monthly average of accounts receivable during the last available twelve months shall be adjusted in accordance with the percentage of increase or decrease in the twelve months average of monthly gross revenues which may have occurred in the interim.
- (b) The monthly amount of accounts receivable thus established shall be further adjusted in accordance with any demonstrable variance from the average for the particular month in which the loss occurred, due consideration also being given to the normal fluctuations in the amount of accounts receivable within the fiscal month involved.

There shall be deducted from the total accounts receivable, however established, the amount of such accounts evidenced by records not lost or damaged, or otherwise established or collected by the Insured, and an amount to allow for probable bad debts which would normally have been uncollectible by the Insured.

### **23. PROPERTY IN TRANSIT**

- (a) Property in transit shall mean shipments within and between the territorial limits of this policy including the coastal waters thereof, by any means of conveyance, from the time the property is moved for purpose of loading and continuously thereafter, while awaiting and during loading and unloading and in temporary storage, including temporary storage on any conveyance intended for use for any outbound or inbound shipment; including during unavoidable deviation and delay; until safely delivered into the place of final destination.
- (b) This insurance is extended to cover loss or damage to property
  - (1) sold and shipped by or to the Insured under terms of F.O.B. point of origin or other terms usually regarded as terminating the shipper's responsibility short of points of delivery;
  - (2) occasioned by the acceptance by the Insured, by its agents, or by its customers of fraudulent bills of lading, shipping and delivery orders, or similar documents;
- (c) The Insured may waive right(s) of recovery against private, common and contract carriers and accept bills of lading or receipts from carriers, bailees, warehousemen, or processors limiting their liability, but this Transit insurance shall not inure to the benefit of any carrier, bailee, warehousemen, or processor;
- (d) With respect to shipments made under F.O.B. point of origin or similar terms, this Company agrees to waive its rights of subrogation against consignees at the option of the Insured.
- (e) The Insured is not to be prejudiced by any agreements exempting lighter men from liability.

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- (f) Seaworthiness of any vessel or craft is admitted between the Company and the Insured.
- (g) The following exclusions shall not apply to this coverage: 13(D)(4)(a) and 13(D)(4)(c).
- (h) This transit coverage shall include time element.

#### 24. ORDINANCE & LAW

In the event of loss or damage under this policy, by any covered cause of loss during the term of this policy, to Covered Property insured herein, that causes the enforcement of any law, ordinance, regulation, or government directive regulating the construction, restoration, use, size, number of floors, density, number of units or repair of damaged property subject to the sublimit specified in Sublimits of Liability, this policy provides coverage for:

- (a) **COVERAGE A** - the value of such undamaged part of the facility which must be demolished.
- (b) **COVERAGE B** - the cost of demolishing the undamaged facility including the cost of clearing the site.
- (c) **COVERAGE C** - the increased cost of repair or reconstruction of the damaged facility on same or another site limited to the minimum requirements of such law or ordinance regulating the repair or reconstruction of the damaged property and the cost thereof on the same site. This coverage includes the cost to replace any property that cannot be rebuilt to the same density, use, size, number of floors or number of units.

However, the Company shall not be liable for any increased cost of construction loss unless the damaged facility is substantially rebuilt or replaced within two years.

- (d) **COVERAGE D** - any increase in time element loss arising out of the additional time required to comply with such law or ordinance. This increase will be based upon the difference between the additional time required to comply with the law or ordinance and the time it would have taken to replace the property with materials of like kind and quality, absent such law or ordinance.
- (e) Coverage includes one year's lost rents for portions of the property which cannot be repaired or replaced due to operation of the above-described ordinances, laws and regulations. The amount of lost rent is to be calculated for each lost unit (or each leased area in the building on the property) as the average gross rental income per unit (or each leased area in the building on the property) calculated

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using units of similar size and use at the insured location for the twelve (12) months after the date of loss.

This coverage includes machinery and equipment.

The Insured has the option to rebuild or reconstruct on the same or another site but recovery hereunder shall be limited to the cost to rebuild or reconstruct on the original site. If the Insured elects not to rebuild, this policy shall pay for the cost of demolition and clearing the site of loss of both the damaged and undamaged property; and pay the actual cash value of both the damaged and undamaged property.

## 25. DEBRIS REMOVAL

This policy insures the following expenses resulting from a covered cause of loss whether or not Covered Property sustains damage:

- (a) the cost of removal and disposal of debris of property covered hereunder wherever the property may be;
- (b) the cost of removal and disposal of debris of property not covered hereunder from a Location of an Insured;
- (c) the cost of recycling debris of property removed including the reasonable cost of cleaning, sorting, separating, segregating, transporting and disposing of such debris to a recycling center.

However, this coverage shall not include the cost to remove and dispose of contaminants or pollutants from land or water.

## 26. NEWLY ACQUIRED PROPERTY

This policy is automatically extended to cover newly acquired real property and time element which may be purchased, leased, rented, borrowed, loaned, used or acquired during the policy period.

The value of such newly acquired real property upon which liability is hereby assumed by this Company shall be reported to this Company within **90 days** from the date on which the insured acquires an insurable interest in such property or properties.

If an Insured does not report the newly acquired real property and time element to the Company within **90 days** of acquisition, then the newly acquired property shall be insured under the Miscellaneous Unscheduled Location limit.

Newly acquired personal property of the type shown under Covered Personal Property shall be insured but is not subject to the Sub-Limit for Newly Acquired Property.

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## **27. SERVICE CHARGES AND EXTINGUISHING EXPENSES**

In the event of loss or damage to covered property by a peril Insured against, this policy shall cover:

- (a) service charges and expenses including fire department, police, rescue and any government or authority charges incurred;
- (b) fire brigade and other extinguishing expenses for which the Insured may be assessed;
- (c) the cost of fire extinguishing materials expended;
- (d) refill of extinguishment systems.

## **28. LOCKS AND KEYS**

This policy is extended to cover the reasonable and necessary expense incurred by the Insured for replacing locks and/or keys resulting from insured physical loss, damage or destruction.

Coverage includes the actual cost to replace, adjust or reprogram locks to accept new keys or entry codes.

## **29. REWARD COVERAGE**

We will reimburse you for rewards paid to an eligible person for information leading to the arrest and conviction of any person or persons committing a crime resulting in loss to Covered Property from a covered peril, including but not limited to Arson, Vandalism, Attempted Theft or Theft.

## **30. TAX LIABILITY - PROPERTY DAMAGE AND PROFITS**

This additional coverage insures the increased tax liability from an insured loss at an Insured Location if the tax treatment of:

- (a) the profit portion of a time element loss payment under this Policy; and/or
- (b) the profit portion of a physical damage loss payment to any and all insured property, including fine arts and valuable papers,

is greater than the tax treatment of profits that would have been incurred had no loss occurred.

## **31. POLLUTANT CLEAN UP AND REMOVAL – LAND AND WATER**

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The Company will pay reasonable and necessary expenses incurred by an Insured to remove, dispose of, treat or clean-up the actual presence of contaminants and pollutants from land or water at an Insured's Location or adjacent property when such land or water is contaminated or polluted due to a covered cause of loss at the Insured's Location. This Additional Coverage does not apply unless such expenses are reported to the Company within 12 months after the expiration of this policy.

### **32. DECONTAMINATION COSTS – ORDINANCE OR LAW**

If Covered Property is contaminated as a result of direct physical loss or damage by a covered cause of loss and there is in force at the time of the loss any law or ordinance regulating contamination, including but not limited to the presence of contaminants and pollutants, this policy insures, as a result of enforcement of such law or ordinance, the increased cost of decontamination, treatment, testing, disposal and/or removal of such contaminated covered property in a manner to satisfy such law or ordinance.

This provision applies only to that part of Covered Property that is contaminated as a result of direct physical loss or damage by a covered cause of loss. For purposes of this provision, smoke and soot from a covered cause of loss shall not be considered a pollutant or contaminant but shall be insured as a result of a covered cause of loss subject to the Program Limit of Liability.

### **33. DECONTAMINATION COSTS – OTHER THAN ORDINANCE OR LAW**

This policy insures direct physical loss, damage or destruction including resulting time element of Covered Property at an insured Location arising or resulting from the following. This policy also insures time element at an Insured Location arising or resulting from the following whether or not physical loss, damage or destruction of Covered Property occurs:

- (a) Bed bugs and lice;
- (b) Human body/fluids;
- (c) Decomposition of human remains

This coverage is extended to include the cost of detection (including canine detection), clean up, removal, disposal, treatment and testing costs associated with the above causes of loss.

For purposes of this coverage, decomposition of human remains and the human body/fluids shall not be considered a pollutant.

For purposes of this coverage, Exclusion 13(D)(4)(a) shall not apply.

### **34. MOLD, MILDEW, FUNGUS**

This policy insures direct physical loss, damage or destruction to insured property and time element which results, ensues or arises from mold, mildew, fungus, wet rot or dry rot and the mold, mildew, fungus, wet rot or dry rot was the result of a covered cause of loss.



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This coverage also includes the cost or expense to test for, remove, remediate and dispose of:

- (a) any fungus, mold, mildew, wet rot or dry rot from Covered Property caused by insured direct physical loss, damage or destruction and the cost to tear out and replace any part of the building or other property as needed to gain access to the mold, mildew, fungus, wet rot or dry rot,
- (b) any and all other damage of the type not otherwise excluded by this policy resulting from mold, mildew, fungus wet rot or dry rot.

This policy shall insure the cost of testing performed after removal and remediation insured by this provision if there is reason to believe that such mold, mildew, fungus, wet rot or dry rot might still be present.

It is agreed that the Insured will give notice to the Company of the intent to make a claim for the costs or expenses described in this provision no later than 24 months after the expiration date of this policy.

### 35. FLOOD

- (a) The term "Flood", as used herein, shall mean unusual and rapid accumulation or run-off of surface water, waves, and the rising (including overflowing or breaking of boundaries) of lakes, ponds, reservoirs, rivers, streams, harbors, levees, dikes, dams and similar bodies of water whether natural or man-made; EXCEPT breaching of a levee, dike or dam as a result of a Named Storm shall not be considered Flood but shall be considered Named Storm.

The term "surface water", as insured hereunder, shall mean seepage, leakage or influx of water (immediately derived from natural sources) through sidewalks, driveways, foundations, walls, basements or other floors, or through doors, windows or any other openings in such sidewalks, foundations, walls or floors; and shall also include water which backs up through sewers and drains due to a flood.

- (b) Flood shall not include storm surge from a Named Storm.
- (c) Flood zones that are mutually agreed to by the Insured and the Company determined at Policy Inception shall not change during the term regardless of re-mapping, re-classification or re-zoning. However, in the event a flood zone of an Insured Location does change mid-term, the Insured shall have the option of amending the flood zone for that Insured Location mid-term.
- (d) To the extent it is not insured elsewhere, this policy shall insure loss, damage or destruction from a covered cause of loss that ensues or arises from Flood.



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### 36. EARTH MOVEMENT

This Policy insures physical loss, damage or destruction caused by or resulting from Earth Movement whether man-made or natural.

Earth Movement includes but is not limited to:

- (a) Earthquake including tremors and aftershocks including earth sinking, rising or shifting from an earthquake;
- (b) Volcanic Eruption, Lava and Ash;
- (c) Tsunami;
- (d) Landslide, Rockslide, Avalanche, Mudslide including earth sinking rising or shifting;
- (e) Mine subsidence, whether or not mining activity has ceased and any other subsidence;
- (f) Any earth sinking, rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include: contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

To the extent it is not insured elsewhere, this policy shall insure loss, damage or destruction from sinkhole.

To the extent it is not insured elsewhere, this policy shall insure loss, damage or destruction from a covered cause of loss that ensues or arises from Earth Movement.

### 37. NAMED STORM

Named Storm means a storm or weather condition that has been declared by the National Weather Service or similar meteorological authority to be a Named Storm such as hurricane, typhoon or tropical storm. For purposes of this definition Named Storm shall include direct physical loss or damage caused by:

- (a) direct action of wind including wind driven rain, Storm Surge, and the breach of any levee, dam or dike from a Named Storm;
- (b) material, object or debris that is carried, propelled or in any manner moved by such windstorm;
- (c) tornado(es) that is the result of actions or effects of such windstorm;

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(d) hail that is the result of actions or effects of such windstorm;

(e) lightning that is the result of actions or effects of such windstorm.

To the extent it is not insured elsewhere, this policy shall insure loss, damage or destruction from a covered cause of loss that ensues or arises from Named Storm.

For purposes of this provision, Storm Surge (wind driven surge) is defined as an abnormal rise of water generated by a named storm, over and above the predicted astronomical tide.

Storm surge shall not be considered Flood.

### **38. WIND DRIVEN RAINWATER**

This policy shall insure for, loss, damage or destruction including clean-up of Covered Property and resulting time element at an Insured Location due to rain or water (not constituting a Flood or rain/water from a Named Storm), that enters a building or structure insured under this policy whether or not the rain or water is driven by wind and whether or not there is exterior damage to a building or structure.

### **39. SERVICE INTERRUPTION**

A. This policy insures physical loss, damage, destruction to Covered Property and/or Time Element at an insured Location when such physical loss, damage, destruction or Time Element results from:

- (1) the interruption of incoming services consisting of electricity, gas, fuel, steam, water, refrigeration;
- (2) the lack of outgoing sewerage service;
- (3) the interruption or lack of communication supply services including, but not limited to fiber optics, coaxial cables, microwave radio relays

and including poles, towers and transmission or distribution lines (whether above or below ground) by reason of any direct physical loss or damage of the type insured against in this policy to property of the supplier or Covered Property of an Insured, whether such property is located on an Insured Location or off of an Insured

Location, within the policy Coverage Territory, that prevents in whole or in part the delivery of such service.

B. The Insured will as soon as practicable notify the suppliers of service of any interruption of such services.

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- C. The Company will not be liable if the interruption of such service(s) is caused directly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the supply of such specified services.
- D. The period of the Service Interruption starts with the time when the interruption of the specific service occurs and ends when the due diligence and dispatch of the service could be wholly restored.

In the event of an occurrence that affects the community such as a tornado, flood, named storm, terrorism or earthquake, the Period of Restoration will take into consideration the impact to the community in determining when the Insured should have repaired, rebuilt or replaced property.

Loss arising, resulting or ensuing from Service Interruption, such as fire and explosion, are not limited by the Sub-Limit, if any, for Service Interruption.

#### 40. DEFERRED PAYMENTS

This policy covers insured physical loss or damage to Covered Property of the type insured sold by the Insured under a conditional sale or trust agreement or any installment or deferred payment plan and after such property has been delivered to the buyer. Coverage is limited to the unpaid balance for such property.

In the event of loss to property sold under a deferred payment plan, the Insured will use all reasonable efforts, including legal action, if necessary, to effect collection of outstanding amounts due or to regain possession of the property.

There is no liability under the policy for loss:

- (a) pertaining to goods/products recalled including the costs to recall, test or to advertise such recall by the Insured;
- (b) from theft or conversion by the buyer of the property after the buyer has taken possession of such property;
- (c) to the extent the buyer continues payments;
- (d) not within the Coverage Territory of this policy.

#### 41. DESTRUCTION BY CIVIL AUTHORITY

This insurance is extended to insure direct physical loss, damage or destruction to Covered Property caused by acts of destruction executed by order of any public, military or civil authority to prevent the spread of fire or other covered cause of loss. This coverage is subject to the Program Limit of Liability and not a Sub-Limit.

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Time element is included and is also subject to the Program Liability of Liability and not a Sub-Limit.

#### **42. CONTRACT PENALTIES**

This insurance is extended to insure contract penalties and costs assessed against an Insured for failure to manufacture or deliver Covered Property due to a covered cause of loss.

#### **43. FINE ARTS**

This insurance is extended to insure physical loss or damage to owned, non-owned, borrowed, rented or leased Fine Arts while anywhere within the Coverage Territory including transit.

- (a) This coverage excludes loss or damage if the Fine Arts cannot be replaced with other Fine Arts of like kind and quality, unless it is specifically declared to the Company.
- (b) Fine Arts means paintings, etchings, pictures, tapestries, rare or art glass, art glass windows, valuable rugs, statuary, marble, bronze, antique silver, sculptures, antique furniture, antique jewelry, bric-a-brac, porcelains, and similar property of rarity, historical value or artistic merit excluding stamps, furs, jewelry, watercraft, aircraft, money (except coins) and securities.

#### **44. ERRORS & OMISSIONS**

This policy is extended to cover direct physical loss, damage or destruction and time element for Covered Property at Insured Locations within the Coverage Territory if such loss or damage is not payable under this policy solely due to:

- (a) An error or omission in the description of property or Location including but not limited to address, type of property, values, protective safeguards and like information found on a statement of values;
- (b) failure through error or omission to include:
  - (1) Any Location or property of an Insured at the inception date of this policy;
  - (2) Any Location or property newly acquired or constructed during the term of this policy;
  - (3) Any insured entity/organization including mortgagees, loss payees and additional interests.
- (c) error or omission, which results in cancellation or non-renewal of property insured under this policy;

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#### **45. CLAIMS PREPARATION EXPENSE / PROFESSIONAL FEES**

This policy covers the costs incurred by the insured, including reasonable fees payable to the Insured's accountants, architects, auditors, engineers, loss control consultants or other professionals, for producing and certifying any particulars or details contained in the Insured's books or documents, or such other proofs, information or evidence required by the Insurer resulting from insured loss under this policy for which the Insurer has accepted liability.

Coverage shall also apply to Insured / Loss Payee's management expenses and / or consulting expense, including construction management fees. This payment will be based on any agreed upon percentage by contract, or as shown with the production of proof of loss documentation, including any supporting invoices/time sheets/contracts/etc.

This shall include any fees, management or otherwise, that an Insured or Loss Payee under the policy becomes contractually obligated to pay as a result of the physical loss or damage to the property, whether to a third party or inter-company/inter-insured charges.

Coverage shall not include the fees and costs of public adjusters or loss appraisers including any of their subsidiaries, related or associated entities either partially or wholly owned by them or retained by them for the purpose of assisting them.

#### **46. CONSEQUENTIAL LOSS**

In the event of direct physical loss, damage or destruction insured by this policy to any property situated on the described premises and if such direct physical loss, damage or destruction, without the intervention of any other independent cause, result in a sequence of events which causes physical damage to other property insured by this policy, then this policy will insure such resulting loss or damage. Nothing in this clause shall be deemed to extend this insurance to property which is otherwise specifically excluded from coverage by the terms of this policy.

The liability of the Company includes only the direct physical loss, damage or destruction incurred during such period as would be required with the exercise of due diligence under normal conditions to repair or replace the damaged property, and does not include any liability resulting from the inability of the Insured to make repairs or replacements because of strikes or labor disputes.

#### **47. DOWNZONING**

Notwithstanding anything contained in this policy to the contrary, in the event of physical loss, damage or destruction to Covered Real Property by a covered cause of loss, the Company shall be liable for direct damage loss or destruction and time element due to the existence of laws, ordinances, codes, regulations or other governmental restrictions

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or directives, which limit the Insured's ability to rebuild or restore damaged real property including but not limited to improvements and betterments at the described property Location due to quality, height, area and/or occupancy.

The amount of such downzoning loss shall be the sum of:

- (a) The replacement value of covered real property which must be demolished or which is damaged or destroyed and which may not be rebuilt or repaired;
- (b) The cost to repair, remodel or reconstruct remaining portions of the structure to conform to permitted uses and all other applicable ordinances, codes, laws, regulations or directives; and
- (c) One year's lost rents for portions of the property which cannot be repaired or replaced due to operation of the above-described ordinances, laws and regulations. The amount of lost rent is to be calculated for each lost unit (or each leased area in the building on the property) as the average gross rental income per unit (or each leased area in the building on the property) calculated using units of similar size and use at the insured location for the twelve (12) months after the date of loss.

#### **48. INTERRUPTION BY CASINO CONTROL COMMISSION**

In an order of a Casino Control Commissioner or State equivalent prohibits access to an Insured Location and provided such order is the direct result of actual or imminent

physical loss, damage or destruction of the type insured against under this policy, irrespective of whether or not physical loss, damage or destruction actually occurs, at the insured Location or within 10 miles of it, this policy shall insure the period of time that access is prohibited, beginning at the commencement of such closure but not to exceed the number of consecutive days shown in the Limits of Liability.

#### **49. COMPUTER SYSTEMS NON-PHYSICAL DAMAGE**

- (1) Regardless of any exclusions to the contrary, this policy is extended to insure the Time Element including data restoration, data re-creation and system restoration costs incurred by an Insured during the Period of Restoration resulting from the failure of the Insured's electronic equipment, media, data, software programs or databases to operate, provided that such failure is the result of a malicious act and/or suspension of E-commerce activity in whole or in part, whether such failure is the result of an internal malicious act or an external malicious act via the internet or other computer-based interactive communications network which includes business-to-business commerce.
- (2) This provision also applies to a terrorist act or event and foreign government tampering/hacking whether or not such are insured perils under this policy.



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- (3) Coverage includes malicious acts against a third party data service provider hosting an Insured's information in a Cloud which causes an Insured's operations to be interrupted, in whole or in part. For purposes of this provision, Cloud means a communication network, internet and/or service for shared computer processing applications.
- (4) A malicious act includes, but is not limited to: malware such as virus, trojans, worms, bots, back doors, spyware and adware; ransomware; denial of access; unauthorized access; denial of service; and hacking.
- (5) Coverage is extended to include non-malicious acts such as an exploit.
- (6) The period of interruption is the period starting when an Insured's electronic equipment, media, data, software programs or internet fail to operate and ending when with due diligence and dispatch, the Insured's electronic equipment, media, data, software programs and/or internet could be restored to the same or equivalent operating condition that existed prior to the failure.
- (7) This coverage is extended to provide the cost of restoration or replacement, including the cost of data entry, reprogramming and computer consultation services.
- (8) For purposes of this provision, the Coverage Territory is amended as follows: A computer virus, malicious act or other incident that occurs on the Internet or other computer-based interactive communications network may originate anywhere in the world.
- (9) As respects the Insured's E-commerce on the internet, the amount of loss will be reduced to the extent that the reduction in the volume of business from the affected internet commerce activity of an Insured is offset by an increase in the volume of business the Insured receives from other channels of commerce.
- (10) It is further agreed and understood this coverage extends to include the payment of a ransom demand upon an Insured if the Insured believes the payment of the ransom amount demanded is necessary to protect their operations and/or people.
- (11) This coverage shall include the cost to provide refunds to guests or customers of the Insured if such refunds are demanded by the guest or customer solely due to a malicious act committed on an Insured. Coverage provided by this provision shall not duplicate coverage provided elsewhere in this policy.
- (12) If an insured malicious act under this provision applies, then the Company shall pay for the service of a public relations firm to assist the Insured in communicating their response of this malicious act to the media, public and the Insured's customers, clients, guests and members.
- (13) The Company shall have the right and duty to defend an Insured for a claim or suit as a result of an insured malicious act, even if the claim or suit is groundless. The Insured agrees not to admit liability or settle any claim or suit without written consent of the Company. The Company's obligation to defend the Insured shall cease after the limit of insurance is exhausted by the payment of loss under this section.

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#### **50. COMMUNICABLE DISEASE**

This policy is extended to insure the loss sustained, including extra expenses and costs, during the period of time when as a direct result of disease contamination, or the threat of possible disease contamination, the Location of an Insured is totally or partially closed, such closing being at the direction of either The National Center for Disease Control and/or the applicable state, city or municipal department of public health. Physical damage to the Location of the Insured is not required. This policy further insures the cost of testing and remediation.

This Policy will pay for this coverage only if the loss or damage is reported to the Company in writing within one hundred eighty days (180) following the commencement of the loss or damage.

#### **51. MISCELLANEOUS UNSCHEDULED LOCATIONS**

This policy is extended to insure property, as more formally described in the section Covered Property, including time element at a miscellaneous unscheduled location that has not been previously reported to the Company whether the Location is a permanent Location or a Location that is temporary such as a leased or rented Location for covered causes of loss.

#### **52. DATA RESTORATION**

This policy is extended to insure the cost and expense including labor, forensics, consulting fees and materials of restoring or recreating data which was lost, damaged or

destroyed due to a covered cause of loss except for loss that is insured and paid within the Computer Systems Non-Physical Damage provision.

#### **53. OFF SITE STORAGE – DATA, MEDIA, PROGRAMS, SOFTWARE**

This policy is extended to insure the loss, damage or destruction of data, media, programs and software while stored off site whether or not the Location where the data, media, programs and software is owned, occupied or used by an Insured if the loss, damage or destruction is the result of a covered cause of loss.

Time element is included and subject to the Program Limit of Liability and not the Sub-Limit, if any, for this coverage.

### **C. PROPERTY EXCLUDED**

Unless insured elsewhere within this policy, the following are not considered Covered Property:

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- (1) Precious stones, bullion, jewelry, money, deeds, notes, evidence of debt and securities EXCEPT as insured under Valuable Papers or Fine Arts. Money includes coins, paper currency, chips, markers, charge slips and IOUs. For purposes of this exclusion, property of the kind described in this provision that is the property of a guest of an Insured shall not be excluded if an Insured is legally liable for such property.
- (2) Land or water, EXCEPT the following shall be considered Covered Property and this exclusion does not apply to:
  - a. Land improvements consisting of any alteration to land whether manmade or natural including grading, excavation, backfilling, filling, dredging, landscape gardening, artificial turf, earthen dikes, dams, decking, berms, sidewalks, roads, pavements, tunnels, connecting infrastructure, additions to land such as draining systems and similar improvements and includes fill or land beneath such property. Land improvements include the cost of reclaiming, restoring or repairing land improvements.
  - b. Water that is contained within any enclosed tank, piping system or any other processing equipment and including impounded water.
  - c. Trees, plants, shrubs, lawns, tee boxes, fairways, greens, driving ranges, bunkers, and sand traps.
  - d. Dunes
- (3) Growing crops and standing timber.
- (4) Animals, EXCEPT if the animals are held for sale, research or are utilized in the operations of an Insured.
- (5) Underground mines or mine shafts and any property within such mine or shaft.
- (6) Aircraft EXCEPT aircraft manufactured by the Insured and drones shall not be excluded.
- (7) Watercraft EXCEPT watercraft manufactured by an Insured, watercraft onshore and watercraft used to maintain an Insured Location shall not be excluded.
- (8) Motor Vehicles licensed for highway use EXCEPT while at an Insured Location and motor vehicles used solely to maintain the premises.

#### **D. PERILS EXCLUDED**

Unless otherwise insured herein, this policy does not insure against loss or damage caused by any of the following excluded causes of loss EXCEPT a covered cause of loss ensuing, resulting or arising from the excluded cause shall be insured. If a loss involves both a covered cause of loss and an excluded cause of loss, this policy shall pay for the portion of loss insured by this policy.

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- (1) Any loss or damage from a fraudulent, dishonest or criminal act or acts committed by the Insured or any of the Insured's employees however, a willful act of destruction by an employee, including a temporary and seasonable employee, is insured;
- (2) inventory shortage or unexplained disappearance;
- (3) the cost of correcting defective design or specifications, faulty materials or faulty workmanship performed by an Insured. But, if loss or damage from a covered cause of loss results, to Covered Property, from such defective design or specifications, faulty material or faulty workmanship, then this policy will cover such ensuing loss or damage not otherwise excepted or excluded from coverage;
- (4) loss or damage from:
  - (a) vermin or other insects;
  - (b) inherent vice or rust;
  - (c) fungus, mold(s), mildew or yeast; or any spores or toxins created or produced by or emanating from such fungus, mold(s), mildew or yeast;
    - (1) fungus includes, but is not limited to, any of the plants or organisms belonging to the major group fungi, lacking chlorophyll, and including mold(s), rusts, mildews, smuts and mushrooms;
    - (2) mold(s) includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produce mold(s);
    - (3) spores means any dormant or reproductive body produced by or arising or emanating out of any fungus, mold(s), mildew, plants, organisms or microorganisms.

This exclusion shall not apply to any loss or damage in the form of, caused by, contributed to or resulting from fungus, mold(s), mildew or yeast, or any spores or toxins

created or produced by or emanating from such fungus, mold(s), mildew or yeast which is the direct result of a Covered Loss not otherwise excluded by the Policy, provided that such fungus, mold(s), mildew or yeast loss or damage is reported to the Company within 24 months from the expiration date of the Policy.

- (5) errors in processing or manufacturing of the Insured's products. But if loss or damage from a covered cause of loss results, to Covered Property, from such errors in processing or manufacturing then this policy shall cover such ensuing loss or damage not otherwise excepted or excluded from coverage;
- (6) ordinary wear, tear, or gradual deterioration. But if loss or damage from a covered peril results, to Covered Property, from such wear, tear and gradual deterioration then



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this policy shall cover such ensuing loss or damage not otherwise excepted or excluded from coverage;

- (7) normal settling, shrinkage or expansion of foundations or walls, floors, or ceilings unless this damage results from a covered cause of loss. If normal settling, shrinkage or expansion of foundations or walls, floors or ceilings result in a covered cause of loss then the resulting loss or damage is insured unless otherwise excluded herein;
- (8) loss of market;
- (9) against nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril(s) Insured against in this policy; except
  - (a) if a covered cause of loss ensues, liability is specifically assumed for direct loss by such ensuing covered cause of loss but not including any loss due to nuclear reaction, nuclear radiation or radioactive contamination;
  - (b) the Company shall be liable for loss or damage caused by sudden and accidental radioactive contamination including resultant radiation damage from material used or stored or from processes conducted on an Insured premises provided at the time of loss there is neither a nuclear reactor capable of sustaining nuclear fission in a self-supporting chain reaction nor any new or used nuclear fuel on the Insured premises.
- (10) (a) war, hostile or warlike action in time of peace or war, whether or not declared, including action in hindering, combating, or defending against an actual, impending, or expected attack
  - (1) by any government or sovereign power (*de jure* or *de facto*) or by any authority maintaining or using military, naval, or air forces; or
  - (2) by military, naval, or air forces; or
  - (3) by an agent of any such government, power, authority, or force;
  - (4) any weapon of war employing atomic fission or radioactive force, whether in time of peace or war, whether or not its discharge was accidental;
- (b) insurrection, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against such occurrence, seizure or destruction;
- (11) any loss or damage caused by, resulting from, contributed to or made worse by actual alleged or threatened release, discharge escape or dispersal of Contaminants or Pollutants, all whether direct, indirect, proximate or remote or in whole or in part caused by contributed to or aggravated by any physical damage insured by this policy.

Nevertheless, if a covered cause of loss not otherwise excepted or excluded from coverage, arises directly or indirectly from seepage or contamination or pollution, any

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loss or damage insured under this policy arising directly from that covered cause of loss is insured, subject to the provisions of this policy.

Contaminants or Pollutants mean any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use to property insured hereunder, including, but not limited to, bacteria, fungi, virus, or hazardous substances as listed in the Federal Water, Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Control Act or as designated by the U. S. Environmental Protection Agency. Waste includes materials to be recycled, reconditioned or reclaimed.

This exclusion shall not apply when loss or damage is directly caused by a covered cause of loss.

(12) This policy does not cover:

- (a) The removal of asbestos, dioxin or polychlorinated biphenyls (hereinafter all referred to as "Materials") from any good, product or structure. However, if asbestos is damaged by a covered cause of loss the cost of removal and disposal shall be covered.
- (b) Demolition or increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance regulating such Materials.
- (c) Any governmental direction or request declaring that such Materials present in, or part of, or utilized on any undamaged portion of the Insured's property can no longer be used for the purpose for which it was intended or installed and must be removed or modified.

## **E. CONDITIONS**

### **1. OTHER INSURANCE PROVISIONS**

#### **A. CONTRIBUTING INSURANCE**

Contributing insurance is insurance written upon the same plan, terms, conditions and provisions as this policy.

#### **B. EXCESS INSURANCE**

Excess insurance is insurance over the limit of liability set forth in this policy. The existence of such excess insurance shall not prejudice the coverage provided under this policy.

#### **C. OTHER INSURANCE**



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Except for insurance described in the Contributing Insurance clause, Excess Insurance clause or Underlying Insurance clause this policy shall not cover to the extent of any other collectible insurance. This Company shall be liable for loss or damage only to the extent of that amount excess of such other insurance. However the following shall not be considered "other insurance": insurance for a peril(s) that ensues or arises from Flood, Earth Movement and/or Named Storm.

The Insured is permitted to have other insurance over any Limits or Sub-limits of Liability specified in this policy without prejudice to this policy. The existence of any such insurance shall not reduce any Limit or Sub-Limit of Liability in this policy. Any other insurance that would have provided primary insurance in the absence of this policy shall not be considered excess.

The Insured is permitted to have other insurance for all, or any part, of any deductible in this policy. The existence of such other insurance shall not prejudice recovery under this policy. If the limits of liability of such other insurance are greater than this policy's applicable deductible, this policy shall apply only after such other insurance has been exhausted.

#### D. UNDERLYING INSURANCE

Underlying insurance is insurance on all or any part of the deductible and against all or any of the perils covered by this policy including declarations of value to the carrier for hire. The existence of such underlying insurance shall not prejudice or affect any recovery otherwise under this policy.

Should the amount of loss payable under such underlying insurance exceed the deductible amount which would apply in the event of loss under this policy, then no deductible shall apply hereunder and that portion which exceeds such a deductible amount shall be considered "other insurance."

Should the amount of loss payable under such underlying insurance be less than the largest deductible amount which would apply in the event of loss under this policy, then the deductible amount to be deducted hereunder shall be the difference between the amount to be paid under such underlying insurance and the largest deductible amount which would apply in the event of loss under this policy.

## 2. SUBROGATION

- (a) If any person or organization to or for whom the Company makes payment under this policy has rights to recover damages from another, then where legally permitted those rights are transferred to the Company to the extent of their payment. That person or organization must do everything necessary to secure the Company's rights and must do nothing after loss to impair them. But an Insured may waive their rights against another party in writing:

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- (1) Prior to a loss.
- (2) After a loss if, at time of loss, that party is one of the following:
  - (a) Someone insured by this insurance;
  - (b) A business firm:
    - (1) Owned or controlled by an Insured; or
    - (2) That owns or controls an Insured; or
  - (c) A tenant of an Insured.

This will not restrict or prejudice this insurance.

- (b) Any recovery from subrogation proceedings, less costs incurred by the Company in such proceedings, will be applied first to the deductible of an Insured and if proceeds remain, such proceeds will be divided between the Insured and Company(ies) participating in the loss in the proportion of their respective interests.

### **3. SALVAGE AND RECOVERIES**

All salvages, recoveries and payments excluding proceeds from subrogation recovered or received subsequent to a loss settlement under this policy shall be applied first to the deductible of an Insured and if proceeds remain, such proceeds will be divided between the Insured and Company(ies) participating in the loss in the proportion of their respective interests.

### **4. BRANDS, LABELS OR TRADEMARKS**

In case of damage by a covered cause of loss to property bearing a brand, label or trademark or which in any way carries or implies the guarantee or the responsibility of the manufacturer or Insured, the salvage value of such damaged property shall be determined after removal in the customary manner, at the expense of the Insurer, of all such brands, labels, trademarks or other identifying characteristics.

### **5. CONTROL OF DAMAGED PROPERTY**

The Insured shall have full right to the possession of all goods involved in any loss under this policy and shall retain control of all damaged goods. The Insured, exercising a reasonable discretion, shall be the sole judge as to whether the goods involved in any loss under this policy are fit for consumption and no goods so deemed by the Insured to be unfit for consumption shall be sold or otherwise disposed of except by the Insured or

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with the Insured's consent, but the Insured shall allow this Company any salvage obtained by the Insured on any sale or other disposition of such goods.

#### **6. PAIR AND SET**

In the event of loss or damage by a covered cause of loss to any article or articles which are a part of a pair or set, the measure of loss or damage to such article or articles shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of the pair or set.

#### **7. KNOWLEDGE/NOTICE OF LOSS**

The Insured shall, as soon as practicable, report to this Company or its agent every loss, damage or occurrence that may give rise to a claim under this policy. It is agreed that knowledge of an act, occurrence, claim or loss by an agent, servant or employee of the Insured shall not constitute knowledge by the Insured unless notice of act, occurrence, claim or loss has been received by the Risk Manager, Chief Financial Officer or General Counsel.

#### **8. PROOF OF LOSS**

In the event of loss or damage hereunder the Insured will provide within 90 days following demand therefor by the Company, a proof of loss to the Company or its appointed representative stating: the place, time, and cause of the loss, damage, or expense; the interest of the Insured and all others in the damaged or destroyed property; the value of the property involved in the loss; and the amount of loss, damage, or expense.

#### **9. PAYMENT OF LOSS**

All adjusted claims shall be due and payable thirty (30) days after presentation and acceptance of satisfactory proof(s) of loss by this Company or its appointed representative.

No payment of loss shall be withheld pending payment or coverage determination by another Company if such loss is insured by this Company.

#### **10. PARTIAL PAYMENT OF LOSS**

It is understood that the Company shall make partial payments of undisputed claim amounts subject to the policy provisions and the normal policy adjustment provisions.

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The Insured shall submit a partial Proof of Loss with all supporting documentation, at the request of the Company, to obtain such partial payment of claim.

The full amount of the actual cash value shall be due and payable no later than 30 days after presentation and acceptance of a proof of loss for the actual cash value. Collecting the actual cash value portion of any claim shall not affect the rights of an Insured under this policy to collect amounts in excess of the actual cash value upon presentation and acceptance of proof of loss. No Company shall unreasonably withhold their acceptance of a proof of loss.

#### **11. AUTOMATIC REINSTATEMENT OF LIMITS**

With the exception of loss caused by perils which are subject to annual aggregate limits as noted in the Sub-Limits of Liability clause, any loss hereunder shall not reduce the amount of this policy.

#### **12. SUIT AGAINST THE COMPANY**

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 36 months next after inception of the loss or the applicable statute of limitations, whichever is greater.

#### **13. APPRAISAL**

- (a) If the Insured and the Company in good faith fail to agree on the amount of loss, then upon written demand upon the other and made within sixty (60) days after receipt of the proof of loss by the Company, the Insured and Company shall proceed to appraisal. The amount of loss may include questions relevant to determining the amount of loss such as the Period of Restoration.
- (b) The Insured, nor the Company, may use this provision as a method to delay the payment of a claim. The Company shall not deny an Insured's request for

appraisal citing the proof of loss or other condition is not fulfilled by the Insured if the alleged unfulfilled condition is not relevant to the appraisal.

- (c) The Insured and the Company shall select a competent, neutral and disinterested appraiser. The chosen appraisers shall provide a signed and notarized affidavit stating the appraiser will determine a true and just award based on their knowledge, skill and judgment. The affidavit will attest the appraiser is competent in appraisals, is neutral and is a disinterested party.
- (d) The appraisers shall then select a competent, neutral and disinterested umpire. If they should fail for fifteen (15) days to agree upon such umpire, then upon the request of the Insured or of the Company such an umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. The chosen umpire shall provide a signed and notarized affidavit stating

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the umpire will determine a true and just award based on his/her knowledge, skill and judgment. The affidavit will attest the umpire is competent in appraisals, is neutral and is a disinterested party.

(e) Once the two appraisers and umpire have been selected all parties involved, including the Insured and Company if they choose to participate in the meeting, shall meet and develop a Memorandum of Appraisal document which outlines at a minimum the following:

- (1) Questions to be appraised and related questions; issues that will not be appraised; and including the exact loss and property to be appraised;
- (2) Procedures and/or rules of the appraisal process;
- (3) The format of the itemized award;
- (4) Rules or procedure for any appeal by the Insured or Company to the appraisers & umpire;
- (5) Timeline and deadlines for all actions in the appraisal process;
- (6) And any other matters that will facilitate an efficient and fair appraisal process;
- (7) The Memorandum of Appraisal shall include the original affidavits referenced in (c) and (d) above.

The document shall be signed by the appraisers, umpire, Insured and Company. The Insured nor the Company shall unreasonably withhold their signature given their involvement in the selection of their chosen appraiser. All parties shall receive a copy of the Memorandum of Appraisal and supporting documents upon execution of such.

- (f) Once the Memorandum of Appraisal is completed and executed, at a reasonable time and place, the appraisers shall appraise the loss following the guidelines and procedures set forth in the Memorandum of Appraisal.
- (g) If the appraisers fail to agree, they shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss, subject to an appeal process noted in the Memorandum of Appraisal, if any.
- (h) A full copy of the appraiser's individual reports and the final determination shall be provided promptly to both the Insured and the Company and if requested, by the Producing Agent.
- (i) The Insured and the Company shall each pay his/her or its chosen appraiser and shall bear equally the other expense of the appraisal and of the umpire.
- (j) This provision shall not be interpreted to impose a condition precedent on any Insured.

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#### **14. ASSISTANCE AND COOPERATION OF THE INSURED**

The Insured shall cooperate with the Company, and, upon the Company's request and expense, shall attend hearings and trials and shall assist in effecting settlements, in securing and giving evidence, in obtaining the attendance of witnesses, and in conducting suits.

#### **15. SUE AND LABOR**

In case of actual (or imminent, with prior notice to and approval from this Company) loss or damage by a covered cause of loss it shall, without prejudice to the insurance, be lawful and necessary for the Insured, their factors, servants, or assigns to sue, labor, and travel for, in, and about the defense, the safeguard, and the recovery of the property, or any part of the property, insured hereunder without prejudice to this insurance; nor, in the event of loss or damage, shall the acts of the Insured or of the Company in recovery, saving, and preserving the insured property be considered a waiver or an acceptance of abandonment. The expenses so incurred shall be borne by the Insured and the Company in accordance with the policy conditions in regard to losses including deductible application.

- a) the claim must involve expenditures of money to protect covered property from a covered cause of loss,
- b) the loss to be minimized or avoided has to be occurring or imminent,
- c) the expenses incurred must be reasonable under the circumstances and closely tied to the loss at issue, and
- d) the expenses must have been incurred for the primary benefit of the Company

#### **16. CANCELLATION/NON-RENEWAL**

- (a) This policy may be cancelled at any time at the request of the First Named Insured by giving written notice to the Company.
- (b) The Company may cancel this policy by mailing to the First Named Insured at the address shown in the Declaration hereof and to the Producer of Record written notice stating not less than ninety (90) days thereafter such cancellation shall be effective; ten (10) days if for nonpayment of premium. The Company may cancel this policy for the following reasons:
  - (1) Loss of Reinsurance;
  - (2) Non-Payment of Premium



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In the event the Company issues a Notice of Cancellation to the First Named Insured due to non-payment of premium, the Company shall reinstate this policy with no lapse in coverage upon receipt of the premium due if the premium is received by the Producing Agent prior to the cancellation date set forth on the Notice of Cancellation. The Producing Agent shall immediately transfer the premium to the Company upon receipt of the premium from the First Named Insured.

- (c) The mailing of such notice shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the First Named Insured or by the Company shall be equivalent to mailing.
- (d) Cancellation shall not affect coverage on any shipment in transit, if any, on the date of cancellation. Coverage will continue in force until such property is delivered and accepted.
- (e) The refund for Cancellation shall be calculated on a pro-rata basis subject to a minimum earned premium or hurricane minimum earned premium if any.
- (f) This policy may be non-renewed by the Company by mailing to the First Named Insured at the address shown in the Declaration hereof and the Producer of Record written notice not less than 90 days before the expiration date of this policy.
- (g) If the period of notice is prohibited or made void by law, the period of limitation shall be deemed to be amended so as to comply with the period of limitation permitted by such law.
- (h) Notice of cancellation or non-renewal shall be provided to mortgagees, loss payees and/or additional interests if required of the Named Insured by a contract or agreement which may be evidenced on a certificate of insurance on file with the retail agent.

Regardless of the requirement in the written contract or agreement, in no event will the notice of cancellation or non-renewal provided by the Company be greater than 45 days' notice (10 days for non-payment) unless otherwise endorsed to this policy.

The retail agent shall be responsible for the timely notification to the Company of any loss payee, mortgagee or additional interest requiring notice of cancellation or non-renewal and upon written request by the Company provide to the Company a copy of the written contract or agreement evidencing such notification is a condition in the contract or agreement and a copy of any certificate of insurance.

If any Company's A.M Best or S&P Rating is downgraded during the policy period, the Insured has the right to cancel coverage and a pro-rata return premium would apply.

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#### **17. ABANDONMENT**

There shall be no abandonment to the Company of any property.

#### **18. FALSE OR FRAUDULENT CLAIMS**

If the Insured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become voidable.

#### **19. ASSIGNMENT**

Assignment or transfer of this Policy shall not be valid except with the written consent of the Company.

#### **20. MORTGAGE / LENDER CLAUSE**

Loss or damage, if any, under this policy shall be payable to the Lender(s) or Mortgagee(s), as their interest(s) may appear to the extent of their insurable interest in the insured property. This insurance, as to the interest(s) of Lender(s) or Mortgagee(s) insured therein, shall not be invalidated by:

- (a) any act or neglect of the mortgagor, debtor or owner of the described property,
- (b) any foreclosure or other proceedings;
- (c) notice of sale relating to the described property;
- (d) any change in title or ownership of the property;
- (e) by occupation of the premises for purposes more hazardous than are permitted by this policy provided that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee shall, on demand, pay the same.

The Mortgagee or Lender shall notify this Company of any change of ownership or occupancy or increase of hazard if such information becomes knowledge of said Lender or Mortgagee.

In the event the Insured shall substantially neglect to provide Proof of Loss set forth by the conditions of this policy, the Mortgagee or Lender shall submit such Proof of Loss for covered property the Mortgagee or Lender has an insurable interest in within 90 days of notice by this Company to the Mortgagee or Lender.

Subject to actions allowable by law, the Company may cancel this policy by giving the Lender or Mortgagee written notice 45 days prior to the effective date of cancellation, if cancellation is for any reason other than non-payment. If the Insured has failed to pay any premium due under this policy, the Company may cancel this policy for non-payment, but shall give the Lender or Mortgagee written notice 10 days prior to the

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effective date of cancellation. The Lender or Mortgagee may pay the premium due. If the Lender or Mortgagee fail to pay the premium due by the specified cancellation date, all coverage under this policy shall cease.

It shall be the responsibility of the Company to request any documentation, including certificates of insurance or evidence of property insurance, in order to comply with the notice and payment requirements in this section. It is further agreed that Company may rely on such documentation, including the mailing address of the Lender or Mortgagee, in order to serve proper notice as required in this section.

If the Company pays the Mortgagee or Lender for any loss, and denies payment to the Insured, the Company will, to the extent of the payment made to the Mortgagee or Lender be subrogated to the rights of the Mortgagee or Lender under all securities held as collateral to the debt or mortgage. No subrogation will impair the right of the Mortgagee or Lender to sue or recover the full amount of its claim. At its option, the Company may pay to the Mortgagee or Lender the whole principal due on the debt or mortgage plus any accrued interest. In this event, all rights and securities will be assigned and transferred from the Mortgagee or Lender to the Company, and the remaining debt or mortgage will be paid to the Company.

Other provisions relating to the interests and obligations of the Lender or Mortgagee may be added to this policy by agreement in writing.

These provisions do not apply to Loss Payees which are not Lender's Loss Payees or Mortgagees.

## **21. LOSS PAYEE (OTHER THAN LENDER'S LOSS PAYEE)**

If a Certificate of Insurance or Evidence of Property Insurance includes a Loss Payee that is not a Lender's Loss Payee and that Loss Payee has documented insurable interest at the time of loss in the insured personal property, then loss or damage payable under this policy for that insured personal property shall be payable jointly to the Loss Payee and the Insured as their interest may appear.

## **22. CERTIFICATES OF INSURANCE**

Any Certificate of Insurance issued in connection with this policy shall be issued solely as a matter of convenience or information for the addressee(s) or holder(s) of said Certificate of Insurance, EXCEPT where any Mortgagees, Additional Insured(s) or Loss Payee(s) are named or any waiver of subrogation granted pursuant to the Special Provisions of said Certificate of Insurance or Evidence of Property Insurance and as required by lease, contract or agreement.

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In the event any Mortgagees, Additional Insured(s) or Loss Payee(s) are named on the Certificate of Insurance or Evidence of Property Insurance, this policy shall be deemed to have been endorsed accordingly. However, naming a Mortgagee, Loss Payee or Additional Interest does not amend the terms, conditions, exclusions, coverage, perils or limits of the policy.

The Company hereby authorizes the insured's appointed retail agent to issue and retain Certificates of Insurance and Evidence of Property Insurance including any Mortgagee, Loss Payee and Additional Insured status.

### **23. CONFORMITY TO STATUTE**

Terms of this policy in conflict with the written laws of any state in which this policy is issued, which are applicable to this policy, are changed to conform to such laws. However, if such law allows broader coverage than the statute requires then this policy's broader provisions shall apply.

Any provisions required by law to be included in this policy shall be deemed to have been included in this policy.

### **24. TITLES OF PARAGRAPHS**

The titles of the paragraphs of this form and of endorsements and supplemental contracts, if any, nor or hereafter attached hereto are inserted solely for convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

### **25. OCCURRENCE LIMIT OF LIABILITY**

It is understood and agreed that the following special terms and conditions apply to this policy:

- (a) The Program Limit of Liability is the total limit of the Company's liability applicable to each Occurrence, as hereafter defined. Notwithstanding any other terms and conditions of this policy to the contrary, in no event shall the liability of the company exceed this limit or amount irrespective of the number of locations involved.

The term "Occurrence" shall mean any one loss, disaster, casualty or series of losses, disasters or casualties, arising out of one event.

When the term applies to loss or losses from the perils of tornado, riot/rebellion, riot attending a strike, civil commotion, and vandalism and malicious mischief one event shall be construed to be all losses arising during a continuous period of 72 hours.

When filing proof of loss, the insured may elect the moment at which the 72 hour period shall be deemed to have commenced, which shall not be earlier than the first loss to the covered property occurs.

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When the term applies to loss or losses from the peril of earthquake or volcanic eruption one event shall be construed to be all losses arising during a continuous period of 168 hours. When filing proof of loss, the insured may elect the moment at which the 168 hour period shall be deemed to have commenced, which shall not be earlier than the first loss to the covered property occurs.

(b) The premium for this policy is based upon the Statement of Values on file with the Company, or attached to this policy. In the event of loss hereunder, liability of the company, subject to the terms of paragraph (a) above, shall be limited to the least of the following:

- (1) The actual adjusted amount of loss, less applicable deductible(s).
- (2) The Program Limit of Liability shown on the face of the policy or endorsed onto this policy.

(c) If an Occurrence begins prior to the expiration of this policy and continues after the expiration of this policy, then all loss, damage or destruction arising from the Occurrence will be treated as if the entire loss occurred during the Policy Period.

## **26. JOINT OR DISPUTED LOSS AGREEMENT**

(a) This clause is intended to facilitate payment of insurance proceeds when at least one of the policies referenced in (1)(a) below could be, or is, involved in a loss in which this policy is also affected:

- (1) A boiler and machinery policy;
- (2) Damage occurs to Covered Property that is insured by the boiler and machinery policy and this policy; AND
- (3) There is disagreement between the Insurers of (1)(a) and the Company insuring this policy as to whether there is coverage or as to the amount of the loss to be paid, if any, by each Insurer or Company under its own policies.

(b) This clause does not apply if:

- (1) The Insurers referenced in (1)(a) above or the Company insuring this policy do not admit to any liability; AND
- (2) Any Insurer or Company contend that coverage applies under one of the other Insurer's or Company's policy.

(c) The provisions of this clause apply only if all of the following requirements are met:



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(1) The policies referenced in (1)(a) above contain a similar provision at the time of the loss or damage, with substantially the same requirements, procedures and conditions as contained in this clause; AND

(2) The damage to the Covered Property was caused by a loss for which:

(a) The boiler and machinery insurer insurer and the Company insuring the policy admit to some liability for payment under their respective policies; OR

(b) Either:

(1) The boiler and machinery insurer does not admit to any liability for payment, while this Company contends that:

(a) All liability exists under the boiler and machinery policy;  
or

(b) Some liability exists under the boiler and machinery policy and this policy.

(2) The Company insuring this policy does not admit to any liability for payment, while the boiler & machinery insurer contend that:

(a) All liability exists under this policy; or

(b) Some liability exists under this policy and/or boiler & machinery policy;

(3) The insurers:

(a) Do not admit to any liability for payment; and

(b) Contend that some or all liability exists under the other insurer's policy; AND

The total amount of the loss is agreed to by the Insured, and the boiler and machinery insurer..

(d) If the requirements listed in Paragraph (c) above are satisfied, the insurers will make payments to the extent, and in the manner, described as follows:

(1) The insurers/Company will pay, after an Insured's written request, the entire amount of loss each insurer/Company has agreed as being

covered, if any, by their policy and one-half (1/2) the amount of the loss that is in disagreement.

(2) Payments by the Insurers/Company of the amounts that are in disagreement, as described in Paragraphs 1 do not alter, waive or



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surrender any rights of any insurer against any other with regard to the portion of the loss for which each Insurer is liable.

- (3) The amount in disagreement to be paid by an Insurer/Company under this clause shall not exceed the amount payable under the equivalent Loss Agreement(s) of the other Insurer(s)/Company policy.
- (4) The amount to be paid under this clause shall not exceed the amount the Insurer/Company would have paid had no boiler and machinery policy and/or terrorism policy had been in effect at the time of loss. In no event will an insurer pay more than the applicable Limit of Insurance shown in the Declarations.
- (5) Acceptance by the Insured of sums paid under this clause does not alter, waive or surrender any other rights against an Insurer/Company.

(e) Arbitration

- (1) If the circumstances described in Paragraph (3)(b)(1) exist and the Insurers/Company agree to submit their differences to arbitration, the boiler and machinery insurer and the Company insuring this policy will determine the amount each will pay and will pay the insured within 90 days. Arbitration will then take place within 90 days after payment of the loss under the terms of this clause.
- (2) If any of the circumstances described in Paragraph (3)(b)(2) exist, then the Insurers/Company agree to submit their differences to arbitration within 90 days after payment of the loss under the terms of this clause.
- (3) The Insured agrees to cooperate with any arbitration procedures. There will be an arbitrator for each insurer involved. If only two insurers are involved, then those two insurers chosen arbitrators will select one other arbitrator for a total of three arbitrators. If the chosen arbitrators cannot agree on the third arbitrator, then any one of them may request that selection be made by a judge of a court having jurisdiction. A decision agreed to by the majority of arbitrators will be binding on the parties. Judgment on any award can be entered in any court that has jurisdiction.

(f) Final Settlement between Insurers/Company

The insurer(s) or Company found responsible for the greater percentage of the ultimate loss must return the excess contribution to the other insurer(s) or Company.

In addition, the Insurer(s) or Company found responsible for the greater portion of the loss must pay Liquidated Damages to the other Insurer(s) or Company on the amount of the excess contribution of the other Insurer(s) or Company. Liquidated Damages are defined as interest from the date the Insured invokes this Agreement to the date the Insurer(s) or Company that

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contributed the excess amount is reimbursed. The interest is calculated at 1.5 times the highest prime rate from the Money Rates column of the Wall Street Journal during the period of the Liquidated Damages. Arbitration expenses are not a part of the excess contribution for which liquidated damages are calculated. Arbitration expenses will be apportioned between the Insurers or Company on the same basis that the ultimate loss is apportioned.

## **27. PRIORITY OF PAYMENTS**

### **A. Applicable to Primary**

Any recoveries made under the primary or lead policy shall first apply to loss, damage and expense not insured against by the excess policy(ies).

### **B. Applicable to Excess Policy(ies)**

The amount of loss from any one occurrence, for which this policy is excess, shall be determined by combining the loss, damage and expense insured under the primary and other applicable underlying policy. The excess policy(ies) that are subject to this provision shall recognize all insured loss, damage and expense of the primary and any other applicable underlying policy(ies) for purposes of exhaustion of limits.

Upon erosion or exhaustion of the limits of liability of the primary and any applicable underlying policies, this policy shall be liable for the uncollected loss, damage and expense for coverage(s) and peril(s) insured hereunder, subject to this policy's limit(s) of insurance.

## **28. DROP DOWN CLAUSE (applicable to Excess Placements)**

In the event of reduction or exhaustion of the aggregate limit(s) designed in the primary and underlying policy(ies), it is hereby understood and agreed that such insurance afforded by this policy shall apply in excess of the reduced or exhausted underlying limits.

Excess policies shall recognize for purposes of exhaustion or reduction of limits loss, damage and expense insured by the primary and other underlying policy(ies) even if such loss, damage and expense would not be insured by this excess policy.

## **29. FULL WAIVER**

Unless not permitted by law, it is agreed that if there is a conflict in terms and/or conditions in the primary or lead policy, this policy will take precedence over any terms and conditions in the excess policy(ies) attaching over the primary or lead

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policy. This clause does not apply to the perils covered as shown on the declarations of the excess policy(ies).

### 30. VALUATION

At the time of loss, the value of covered property, unless otherwise endorsed herein, shall be as follows:

A. Covered Property at replacement cost without deduction for depreciation except as provided below or by endorsement.

(1) The payment for loss of Covered Property shall be on a replacement cost basis. Replacement cost includes all fees, costs, charges and expenses (including those of architects, surveyors, lawyers, engineers and consulting engineers) incurred by or on behalf of an Insured to reassemble, rebuild, reclaim, reconstruct, repair, replace, or restore Covered Property with new property or materials, either at the site of the loss or, at the sole option of an Insured, another site.

(a) Building on Another Site:

In the event an Insured decides to rebuild on another site, the liability of the Company shall not exceed the cost and expenses which would have been incurred to reassemble, rebuild, reconstruct, repair, replace or restore the property lost, damaged or destroyed at the site of the loss.

(2) Option for Capital Expenditures:

In the event the Insured decides not to reassemble, rebuild, reclaim, reconstruct, repair or restore the property lost, damaged or destroyed, the liability of the Company shall not exceed the cost and expenses which would have been incurred to reassemble, rebuild, reclaim, reconstruct, repair, replace or restore the property lost, damaged or destroyed at the site of the loss provided the proceeds of such loss settlement are expended in any other capital expenditures related to the Insured's operations.

(3) No Repair, Replacement or Capital Expenditures:

If the Insured elects not to reassemble, rebuild, reclaim, reconstruct, repair, replace, or restore the property lost, damaged or destroyed at the same or different site, or expend the loss settlement in other capital expenditures, the liability for the Insurer loss shall be the actual cash value of the property.

(4) Insured Using Their Own Services:

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To the extent the Insured provides its' own general contracting, engineering, design or construction services for repair or reconstruction, the costs incurred by or on behalf of the Insured shall include:

- (a) Overhead charges as defined by the Insured's regular accounting practice in place at the time of the loss, and
- (b) Payroll charges, appropriate fringe benefit costs and expenses of those employees expending time on the project, the cost of which is not otherwise included and
- (c) The share of home office costs including payroll and expenses of the divisions to which such employees are assigned; and
- (d) The share of corporate general and administrative costs allocated to the divisions involved as prescribed in the Insured's regular accounting practice in place at the time of the loss for determining its costs for providing engineering, procurement and construction management.

(5) Special Replacement Cost Provisions:

With respects to piers, wharves, docks, bulkheads, seawalls, bridges and jetties (if any) the valuation shall also include:

- (a) Professional fees for architects and engineers;
- (b) Pile structure, cross supports, underwater anchoring systems, moorings, service lines such as steam, welding gases and other systems, launching areas, attenuation components, breakwaters, service utilities, tanks, piping, equipment, machinery, cranes, hoists, lifts, cables, quays, and the like property usual and customary to piers, wharves, docks, bulkheads, seawalls, bridges and jetties whether under water or above ground;
- (c) Costs to comply with environmental regulations.

B. Property of others at the amount for which the Insured is liable but in no event to exceed replacement cost plus the cost of labor performed and materials expended thereon at the time of loss.

C. Tenant's Improvement and Betterments:

- (1) If repaired or replaced at the expense of the Insured within a reasonable period from the time of loss, the replacement cost of the damaged or destroyed improvements and betterments.
- (2) If not repaired or replaced within a reasonable period from the time of loss, the proportion of the original cost at the time of installation of the damaged or

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destroyed property which the unexpired term of the lease or rental agreement, whether written or oral, in effect at time of loss bears to the period from the date such improvements or betterments were made to the expiration date of the lease.

- (3) If repaired or replaced at the expense of others, there shall be no liability hereunder.
- D. Mercantile Stock: stock actually sold but not delivered at the price at which it was sold, less all discounts and unincurred charges or expenses.
- E. Manufacturer's Finished Stock: finished stock manufactured by the Insured or others on behalf of the Insured at the price, less all discounts and un-incurred expenses, for which the stock has been or would have been sold had no loss occurred.
- F. Stock in Process: The regular cash selling price at the location where loss occurs, less all discounts and charges including unperformed labor expended with the proper proportion of overhead charges, which the stock would have been subject to had no loss occurred.
- G. Raw materials, supplies and other merchandise not manufactured by the Insured: Replacement Cost.
- H. Raw materials, supplies and other merchandise not manufactured by the Insured that are offered for sale prior to loss: the regular cash selling price at the location where loss occurs, less all discounts and charges, which the merchandise would have been subject to had no loss occurred.
- I. Valuable Papers & Records: The cost to repair, replace, restore, recreate, including the cost of research, engineering and other costs of repairing, replacing, restoring or recreating valuable papers and records that suffer loss, damage or destruction. If the Insured is unable to repair, replace, restore or recreate the papers & records within a reasonable time after the date of the loss then the value to the Insured of the damaged or destroyed valuable papers and records will be paid.
- J. Film, Records, Manuscripts and Drawings: On exposed films, records, manuscripts and drawings that are not valuable papers and records, the value of blank materials plus the cost of copying information from back-up or from originals of a previous generation.
- K. Patterns and dies: Replacement cost.
- L. Electronic Data and Media: The cost to repair or replace, including the cost of research, engineering, forensics and other costs of repairing, replacing, restoring or recreating electronic media, software, programs or data. Such costs shall include any additional reasonable expense incurred in reproducing the data and programs, to continue normal computer operations. If the electronic media, software, programs or data cannot be substantially repaired, replaced, reproduced or recreated then the blank value of such property will apply.



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If an Insured recovers from a licensor or lessor for loss or damage, then payment under this policy will be reduced to the extent of such recovery.

M. Fine Arts and Antiques: The Insured may choose from the following valuations:

- (1) the cost to repair or restore the article to the condition that existed immediately prior to the loss; or
- (2) the cost to replace the article; or
- (3) the value designated for the article on file with the Insured; or
- (4) the appraisal value of the art or antique if the appraisal was made within 15 years of the date of loss.

In the event an insured article is damaged or destroyed and cannot be repaired or restored to the condition that existed immediately prior to the loss or replaced, the Company shall be liable for the full amount of the value of the article and the Insured agrees to surrender the article(s) to the Company.

The Insured may, at its sole option, accept payment by the Company for the reduction in value of any fine art or antique caused by damage by a covered cause of loss and retain ownership of the property.

- N. Technologically Obsolete: On property that is deemed to be technologically obsolete, or is unavailable because it is no longer in production, the cost of new property that shall perform the same functions as the original property, including any betterment inherent in the design of such property.
- O. Consequential Reduction in Value: This policy insures the reduction in value of insured components or parts of components or parts of products or the remaining part or parts of any lot of merchandise usually sold by lots or sizes, color ranges, or other classifications due to loss or damage insured against by this policy to other insured components or parts of products.
- P. LEED/Green Property

(1) Property LEED/Green Certified Prior to Loss

The reasonable and necessary amount to upgrade to LEED/green the covered or damaged property that was LEED/Green Certified at the time of loss. At the Insured's discretion, the Insured may elect not to upgrade to green. This provision includes the cost to recertify the property or certify the property in the event of a total loss.

(2) Property not LEED/Green Certified Prior to Loss

If the damaged property was not LEED/Green Certified at the time of the loss or to the personal property within such building, at the Insured's option the Company will pay to repair or replace damaged or destroyed:



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- (a) Appliances, doors, windows or office equipment with products of like kind and quality that have been identified as ENERGY STAR or equivalent products of energy efficiency;
- (b) Systems furniture or seating with products of like kind and quality that are certified as GREENGUARD Indoor Quality Certified or products with similar emissions characteristics;
- (c) Upgrade interior finish materials to products with lower emissions, are sustainably produced, are rapidly renewable or include recycled content;
- (d) Upgrade interior plumbing systems to increase water efficiency;
- (e) Upgrade lighting and heating systems with ENERGY STAR or equivalent products;
- (f) With respect to a total loss, the Company will pay to replace the building using the most cost effective techniques, products and materials that should satisfy the prerequisites and earn the minimum number of points required to qualify for LEED Silver.
- (g) Certification using LEED New Construction (LEED NC) Rating System. The Company shall pay for certification expenses.

In addition, the Company shall pay for air testing and outdoor air ventilation of the reconstructed space as well as the cost of engaging a LEED Accredited architect or engineer to participate in the design and/or construction administration of the damaged portion of the building or the entire building, whichever is applicable.

### **31. DESIGNATED ADJUSTER**

It is agreed that at the Insured's option, the Company will use the following firm for the adjustment of all claims made against this policy.

This assignment may be changed by mutual consent of the Insured and the Company.

Brian Emberton  
Crawford Global Technical Services  
5909-D Peachtree Dunwoody Road NE  
Suite 1000  
Atlanta, GA, 30328  
404.497.6000

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Richard Lafayette  
Crawford Global Technical Services  
5909-D Peachtree Dunwoody Road NE  
Suite 1000  
Atlanta, GA, 30328  
404.497.6820

### **32. PRESERVATION OF PROPERTY**

In the case of actual or imminent direct physical loss, damage or destruction by a covered cause of loss, the expenses incurred by an Insured in taking action for the temporary protection and preservation of property insured by this policy shall be insured whether or not such property is ultimately damaged or destroyed. No deductible applies for these temporary protection and preservation expenses.

In addition, during this period of temporary protection and preservation, such property shall be insured for any cause of loss even if otherwise excluded in this policy.

The period of time for temporary protection and preservation of property shall not exceed 90 days.

### **33. BANKRUPTCY**

Bankruptcy or insolvency by an Insured will not relieve any Company of their obligations under this policy.

### **34. BREACH OF WARRANTY**

If a breach of warranty or condition in this policy occurs, which breach, by the terms of the warranty or condition, shall operate to suspend or void this insurance, the suspension or voidance due to such breach shall be effective only during the continuance of such breach, and then only with respect to the property at the location where the warranty or condition has reference to which the breach occurs.

### **35. AUTHORSHIP**

It is agreed the Company(ies) are the sole authors of this policy.

### **36. EXTORTION**

Recovery under this policy shall not be affected by the refusal of an Insured to comply with any extortion demand.

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**37. CONTROL OF PROPERTY**

This insurance shall not be prejudiced by any act or neglect of the owner of any building if the Insured is not the owner thereof, or by any act or neglect of any occupant (other than an Insured) of any building, when such act or neglect of the owner or occupant is not within the control of an Insured, or by failure of an Insured to comply with any warranty or conditions contained in this policy of any form or endorsement attached to this policy with regard to any portion of the premises over which an Insured has no control.

**38. SEVERABILITY OF INTERESTS**

Each of the Insureds covered by this policy shall have the same protection and obligations as if the policy has been issued individually to each of them. However, the inclusion of more than one Insured will not operate to increase the limit of liability of the Company beyond their portion of the limit of liability stated in the policy. Nor will more than one Insured operate to stack deductibles in the event of one Occurrence affecting more than one Insured.

**39. JURISDICTION & CHOICE OF LAW**

This policy will be governed by the laws of and in a court of competent jurisdiction in Mississippi.

**40. CURRENCY**

Losses will be adjusted and paid in the currency of the United States of America.

Currency shall include cryptocurrency such as bitcoins.

**SERVICE OF SUIT ENDORSEMENT**

Named Insured Gulfside Casino Partnership, dba Island View Casino Resort, dba Windance Country Club			Endorsement Number
Policy Symbol FS	Policy Number D37406867 007	Policy Period 05/01/2019 to 05/01/2020	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Information about service of suits upon the company is given below. Service of process of suits against the company may be made upon the following person, or another person the company may designate:

Mr. Paul Bech, Esq., Associate General Counsel  
Chubb  
436 Walnut Street  
Philadelphia, PA 19106-3703

The person named above is authorized and directed to accept service of process on the company's behalf in any action, suit or proceeding instituted against the company. If the insured requests, the company will give the insured a written promise that a general appearance will be entered on the company's behalf if a suit is brought.

If the insured requests, the company will submit to the jurisdiction of any court of competent jurisdiction. The company will accept the final decision of that court or any Appellate Court in the event of an appeal. However, nothing in this endorsement constitutes a waiver of the company's right to: remove an action to a United States District Court, seek a transfer of a case to another court, or to enforce policy provisions governing choice of law or venue selection, as may be permitted by the laws of the United States, or of any state in the United States.

The law of some jurisdictions of the United States of America requires that the Superintendent, Commissioner or Director of Insurance (or their successor in office) be designated as the company's agent for service of process. In these jurisdictions, the company designates the Director of Insurance as the company's true and lawful attorney upon whom service of process on the company's behalf may be made. The company also authorizes the Director of Insurance to mail process received on the company's behalf to the company person named above.

If the insured is a resident of Canada, the insured may also serve suit upon the company by serving the government official designated by the law of the insured's province.

NOTHING HEREIN CONTAINED SHALL BE HELD TO VARY, ALTER, WAIVE OR EXTEND ANY OF THE TERMS, CONDITIONS, OR LIMITATIONS OF THE POLICY TO WHICH THIS ENDORSEMENT IS ATTACHED OTHER THAN AS ABOVE STATED.

\_\_\_\_\_  
Authorized Representative

SL-34255a (01/16)

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### ENDORSEMENT NO. 1

**Insured:** Gulfside Casino Partnership and as further defined herein

**Effective Date:** May 1, 2019

**Policy Number:** \_\_\_\_\_

### PARTICIPATING COMPANY ENDORSEMENT

In consideration of the premium charged at inception of this policy, the following provision is added to the Named Perils Property Form, Section 5 Program Limit of Liability:

It is agreed this policy is a Participation policy. The participating Companies, hereafter referred to as Insurer(s) or Company(ies), agree to pay on behalf of an Insured the amount recoverable in accordance with the terms and conditions of this policy provided that:

- (1) The collective liability of Participating Companies shall not exceed the Program Limit of Liability or any appropriate Sub-Limit of Liability including Annual Aggregate Limits.
- (2) The liability of each of the Participating Companies shall not exceed the participation limit set against its name with the exception of loss adjustment and professional fees which cost shall be 100% assumed by the Companies on each applicable layer of insurance.

INSURER OR COMPANY	POLICY NUMBER	PARTICIPATION AMOUNT
Westchester Surplus Lines Ins. Co.	#D37406867007	\$15,000,000 p/o \$75,000,000 primary
Independent Specialty Ins. Co.	#VISCN000006004	\$6,800,000 p/o \$200,000,000 primary
Interstate Fire & Casualty Ins. Co.	#VRXCN000006004	\$22,000,000 p/o \$200,000,000 primary
Certain Underwriters at Lloyd	#VPCCN000006004	\$11,200,000 p/o \$200,000,000 primary
Lloyds of London	#HNYPRP18725075	\$4,000,000 p/o \$75,000,000 primary
Everest Indemnity Ins. Co.	#CA3P005852191	\$5,000,000 p/o \$75,000,000 primary
AXIS Surplus Ins. Co.	#EAF62254619	\$7,500,000 p/o \$75,000,000 primary
Allied World Assurance Co.	#031069291A	\$5,000,000 p/o \$75,000,000 primary
Endurance American Surplus Ins. Company	ESP30001065000	\$5,000,000 p/o \$75,000,000 primary

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INSURER OR COMPANY	POLICY NUMBER	PARTICIPATION AMOUNT
Arch Specialty Ins. Co.	#ESP730442101	\$10,000,000 p/o \$125,000,000 x \$75,000,000
Ironshore Specialty Ins. Co.	004050200	\$6,250,000,000 p/o \$125,000,000 x \$75,000,000
Starr Surplus Lines Ins. Co.	#SLSTPTY11175519	\$12,500,000 p/o \$125,000,000 x \$75,000,000
Evanston Ins. Co.	#MKLV11XP007375	\$20,000,000 p/o \$125,000,000 x \$75,000,000
RSUI Indemnity Ins. Co.	#NHD908136	\$15,000,000 p/o \$125,000,000 x \$75,000,000
Maxum Indemnity Ins. Co.	#SPO602198607	\$10,000,000 p/o \$125,000,000 x \$75,000,000
Hallmark Specialty Ins. Co.	#73PRX19A095	\$5,000,000 p/o \$125,000,000 x \$75,000,000
Western World Ins. Co.	BRB0004708	\$7,762,500 p/o \$125,000,000 x \$75,000,000
Lloyds of London	B1230AP04163E19	\$13,487,500 p/o \$125,000,000 x \$75,000,000
Lloyds of London	B1230AP04163D19+	\$10,000,000 p/o \$100,000,000 x \$200,000,000
James River Ins. Co.	#000771071	\$25,000,000 p/o \$100,000,000 x \$200,000,000
Scottsdale Ins. Co.	AJS0000886	\$15,000,000 p/o \$100,000,000 x \$200,000,000
Mitsui Sumitomo Ins. Co. of America	#EXP7000550	\$100,000,000 p/o \$200,000,000 x \$300,000,000
Homeland Ins. Co. of NY	#795009755	\$100,000,000 p/o \$200,000,000 x \$300,000,000
QBE Specialty Ins. Co.	#AHAR1106600	\$25,000,000 p/o \$100,000,000 x \$200,000,000
Princeton Excess & Surplus Lines Ins. Co.	#3DA3CM000019201	\$7,500,000 p/o \$100,000,000 x \$200,000,000
General Security Indemnity of AZ	#TR00202191601118	\$12,500,000 p/o \$100,000,000 x \$200,000,000
HDI Global Specialty SE	B1180D191015222	\$5,000,000 p/o \$100,000,000 x \$200,000,000

The designated lead/primary or controlling Company are: Independent Specialty Ins. Co.; Interstate Fire & Casualty Ins. Co. and Certain Underwriters at Lloyds through Velocity Risk Underwriters.

If a Company is designated as a lead/primary or controlling Company, then that Company's insurance policy shall be the policy that an excess Company(ies) will follow in their excess insurance policy.

In the event of a quota share participation program, the lead/primary or controlling Company in a quota share layer will be the Company that other participating Company(ies) in the same layer will follow in the event of a coverage dispute.



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## ENDORSEMENT NO. 2

**Insured:** Gulfside Casino Partnership and as further defined herein

**Effective:** May 1, 2019

**Policy Number:** \_\_\_\_\_

### HURRICANE MINIMUM EARNED PREMIUM

In consideration of the premium charged at inception of this policy, Paragraph 2 of Section 7 – Premiums, in the All Risk Property Form is amended as follows:

Except as otherwise stated herein, the minimum earned premium retained by any Company participating in this program shall not exceed 25% of the total premium charged by that Company during the policy period subject to the Cancellation provisions of this policy and the Hurricane Minimum Earned Premium.

Hurricane Minimum Earned Premium:

For Insured Locations within Tier 1 or Tier 1 Hurricane/Named Storm counties, as defined by this policy, if the First Named Insured cancels this policy, removes an Insured Location or reduces the amount of insurance on an Insured Location and coverage existed any time during the period of June 1st to November 30th, the amount of premium the Company will refund will be the Unearned Premium for the Insured Location. The Unearned Premium is the Insured Location Premium times the Unearned Factor shown below:

<u>Days Policy is in Force</u>	<u>Unearned Factor</u>
1-180	.20
181 – 210	.15
211-240	.10
241-270	.075
271-300	.05
301-330	.025
331 or more	None

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Regardless of the aforementioned provisions, the following provisions shall apply:

- (1) Subject to receipt of closing documents within 60 days of closing, this policy allows pro-rata return premium for the location(s) sold if the values that are sold are 25% or less of the Total Insured Values.
- (2) If a premium finance company requests cancellation because of a default under the premium finance agreement, the policy minimum earned premium (if any) and not this endorsement shall apply and unearned premium shall be calculated on a pro-rata basis.

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### ENDORSEMENT NO. 3

**Insured:** Gulfside Casino Partnership and as further defined herein

**Effective:** May 1, 2019

**Policy Number:** \_\_\_\_\_

### VALUATION AMENDATORY ENDORSEMENT

In consideration of the premium charged at inception, it is agreed and understood Section 13(E)(30) – Valuation provision is amended as follows:

1. Provision (A) shall not apply to the South Parking Garage Real Property.
2. Provision (Q) is added as follows and applies solely to the South Parking Garage Real Property:

Q. Covered Property at Actual Cash Value except as provided below or by endorsement.

- (1) The payment for loss of Covered Property shall be on an Actual Cash Value basis. Actual Cost Value includes all fees, costs, charges and expenses (including those of architects, surveyors, lawyers, engineers and consulting engineers) incurred by or on behalf of an Insured to reassemble, rebuild, reclaim, reconstruct, repair, replace, or restore Covered Property with property or materials, either at the site of the loss or, at the sole option of an Insured, another site.

(a) Building on Another Site:

In the event an Insured decides to rebuild on another site, the liability of the Company shall not exceed the cost and expenses which would have been incurred to reassemble, rebuild, reconstruct, repair, replace or restore the property lost, damaged or destroyed at the site of the loss.

(2) Option for Capital Expenditures:

In the event the Insured decides not to reassemble, rebuild, reclaim, reconstruct, repair or restore the property lost, damaged or destroyed, the liability of the Company shall not exceed the cost and expenses which would have been incurred to reassemble, rebuild, reclaim, reconstruct, repair, replace or restore the property lost, damaged or destroyed at the site of the loss provided the proceeds of such loss settlement are expended in any other capital expenditures related to the Insured's operations.

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May 2019

(3) No Repair, Replacement or Capital Expenditures:

If the Insured elects not to reassemble, rebuild, reclaim, reconstruct, repair, replace, or restore the property lost, damaged or destroyed at the same or different site, or expend the loss settlement in other capital expenditures, the liability for the Insurer loss shall be the actual cash value of the property.

(4) Insured Using Their Own Services:

To the extent the Insured provides its' own general contracting, engineering, design or construction services for repair or reconstruction, the costs incurred by or on behalf of the Insured shall include:

- (a) Overhead charges as defined by the Insured's regular accounting practice in place at the time of the loss, and
- (b) Payroll charges, appropriate fringe benefit costs and expenses of those employees expending time on the project, the cost of which is not otherwise included and
- (c) The share of home office costs including payroll and expenses of the divisions to which such employees are assigned; and
- (d) The share of corporate general and administrative costs allocated to the divisions involved as prescribed in the Insured's regular accounting practice in place at the time of the loss for determining its costs for providing engineering, procurement and construction management.

(5) Special Cost Provisions:

With respects to piers, wharves, docks, bulkheads, seawalls, bridges and jetties (if any) the valuation shall also include:

- (a) Professional fees for architects and engineers;
- (b) Pile structure, cross supports, underwater anchoring systems, moorings, service lines such as steam, welding gases and other systems, launching areas, attenuation components, breakwaters, service utilities, tanks, piping, equipment, machinery, cranes, hoists, lifts, cables, quays, and the like property usual and customary to piers, wharves, docks, bulkheads, seawalls, bridges and jetties whether under water or above ground;
- (c) Costs to comply with environmental regulations.

**GENERAL AMENDATORY ENDORSEMENT**

Named Insured Gulfside Casino Partnership, dba Island ViewCasino Resort, dba Windance Country Club			Endorsement Number
Policy Symbol FS	Policy Number D37406867 007	Policy Period 05/01/2019 to 05/01/2020	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**This endorsement modifies insurance provided under the following:**

**GULFSIDE CASINO PARTNERSHIP MANUSCRIPT POLICY**

As respects Westchester Surplus Lines Insurance Company's participation, the following changes are hereby made to the Policy; supersede any term, provision or endorsement to the contrary in this policy; and apply notwithstanding such term, provision or endorsement:

**Paragraph 29. FULL WAIVER** in Section E. **Conditions** is deleted in its entirety.

All other terms and conditions of this policy remain unchanged.

\_\_\_\_\_  
Authorized Representative



## NUCLEAR, BIOLOGICAL, CHEMICAL, RADIOLOGICAL EXCLUSION ENDORSEMENT

Named Insured <b>Gulfside Casino Partnership, dba Island View Casino Resort, dba Windance Country Club</b>			Endorsement Number
Policy Symbol <b>FS</b>	Policy Number <b>D37406867 007</b>	Policy Period <b>05/01/2019 to 05/01/2020</b>	Effective Date of Endorsement
Issued By (Name of Insurance Company) <b>Westchester Surplus Lines Insurance Company</b>			

**THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.**

**This endorsement modifies insurance provided under the following:**

**BOILER AND MACHINERY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART**

The following exclusions are added to your Policy or Coverage Part.

This insurance does not apply to:

- |  |  |
|--|--|
| <p><b>A.</b> Loss or damage arising directly or indirectly from nuclear detonation, reaction, nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by, any physical loss or damage insured against by this Policy or Coverage Part, however such nuclear detonation, reaction, nuclear radiation or radioactive contamination may have been caused. This exclusion replaces any other nuclear detonation, nuclear reaction, nuclear radiation or radioactive contamination exclusions found elsewhere in this Policy.</p> | <p><b>B.</b> Loss or damage arising directly or indirectly from the dispersal, application or release of, or exposure to, chemical, radiological, or biological materials or agents, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by, any physical loss or damage insured against by this Policy or Coverage Part, however such dispersal, application, release or exposure may have been caused.</p> |
|  | <p><b>C.</b> If this endorsement is attached to a Commercial Inland Marine Policy or Coverage Part, the term loss or damage is changed to Loss.</p>  |



**ASBESTOS MATERIAL EXCLUSION  
(Named Peril Exception)**

Named Insured <b>Gulfside Casino Partnership, dba Island View Casino Resort, dba Windance Country Club</b>			Endorsement Number
Policy Symbol <b>FS</b>	Policy Number <b>D37406867 007</b>	Policy Period <b>05/01/2019 to 05/01/2020</b>	Effective Date of Endorsement
Issued By (Name of Insurance Company) <b>Westchester Surplus Lines Insurance Company</b>			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**COMMERCIAL PROPERTY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART**

The following exclusion is added to this policy; supersedes any term, provision or endorsement to the contrary in this policy; and applies notwithstanding such term, provision or endorsement:

- A. This policy excludes loss or damage to asbestos, asbestos-containing product, or asbestos-containing material.
- B. This policy does not provide insurance against any loss, damage, cost, expense, fine or penalty resulting from or arising out of:
  1. remediation of any kind, including but not limited to removal or modification, of any asbestos, asbestos-containing product, or asbestos-containing material from a building or structure of any kind, whether damaged or undamaged, and regardless of the reason such removal is undertaken, whether voluntary or compelled by government directive; or
  2. the demolition or increased cost of reconstruction of property, the repair of property, the removal of debris, or the loss of use of property when caused by, arising out of, or undertaken due to the enforcement of any law, regulation, rule or ordinance that in any manner regulates asbestos, asbestos-containing product, or asbestos-containing material, except to the extent that coverage is provided by the Demolition and Increased Cost of Construction Additional Coverage; or
  3. any fault in the design, manufacture, or installation of asbestos, asbestos-containing product, or asbestos-containing material.
- C. Notwithstanding the exclusions set forth above, this Policy covers direct physical loss or damage to asbestos, asbestos-containing product, and asbestos-containing material which is physically incorporated into an insured building or structure, including the necessary costs to remove or remediate such damaged asbestos, but only when such damage occurring during the policy period is directly and solely caused by the following perils, and then only that part of such asbestos which incurs direct physical loss or damage:
 

fire, lightning, explosion, windstorm, hail, smoke, aircraft or vehicle impact, riot or civil commotion, vandalism, malicious mischief or accidental discharge of fire protective equipment.

All other terms and conditions remain unchanged.

**OCCURRENCE LIMIT OF LIABILITY ENDORSEMENT**

Named Insured Gulfside Casino Partnership, dba Island View Casino Resort, dba Windance Country Club			Endorsement Number
Policy Symbol FS	Policy Number D37406867 007	Policy Period 05/01/2019 to 05/01/2020	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**COMMERCIAL PROPERTY COVERAGE PART**

**COMMERCIAL INLAND MARINE COVERAGE PART**

The following terms and conditions will apply to this policy:

1. The amount of insurance shown on the face of this policy is an amount per occurrence. In no event will the liability of this Company exceed this amount in any one covered loss, disaster or casualty, irrespective of the number of locations involved.
2. The premium for this policy is based upon the Statement of Values on file with the Company. In the event of a covered loss, the covered loss sustained by individual items or elements of coverage will be individually adjusted for purpose of determining whether the individual value of the covered property (hereinafter the "Covered Property Value") is greater or lesser than the actual adjusted amount of the loss. As respects specifically scheduled items or elements of coverage that are identified in the most current Statement of Values on file with the Company, the Covered Property Value shall be the amount individually identified for each specifically scheduled item or element of coverage. As respects items or elements of coverage for which an individual amount is not shown on the most current Statement of Values or other documentation on file with the Company, the Covered Property Value of such items or elements of coverage shall be determined as follows:
  - (a) The value for each real property item will be developed by multiplying the total reported value for real property by the proportion that the square footage of the individual real property item to the total square footage of all real property contemplated in the total reported real property values; and
  - (b) The value of personal property at each location will be developed by multiplying the total reported personal property value by the proportion that the square footage of all real property at the individual location bears to the total square footage of all real property at all locations contemplated in the total reported personal property values.
  - (c) The value of business income and/or rental income at each location will be developed by multiplying the total reported business income and/or rental income value by the proportion that the square footage of all real property at the individual location bears to the total square footage of all real property at all locations contemplated in the total reported business income and/or rental income values.
3. In the event of covered loss, liability of the Company shall be limited to the least of the following:
  - (a) the actual adjusted amount of covered loss, less applicable deductible(s);
  - (b) 100% of the total Covered Property Value of all items or elements of coverage that sustained a covered loss in a single Occurrence, less applicable deductibles;
  - (c) the Limit of Liability or amount of insurance shown on the face of this policy.

All other terms and conditions remain unchanged.

**DEFINITION OF LOSS OCCURRENCE ENDORSEMENT**

Named Insured Gulfside Casino Partnership, dba Island View Casino Resort, dba Windance Country Club			Endorsement Number
Policy Symbol FS	Policy Number D37406867 007	Policy Period 05/01/2019 to 05/01/2020	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**COMMERCIAL PROPERTY COVERAGE PART**

**COMMERCIAL INLAND MARINE COVERAGE PART**

The following definition is added to this policy; supersedes any other definition, express or implied, of the term "Loss Occurrence" in any term, provision or endorsement to this policy; and applies notwithstanding such term, provision or endorsement:

1. "Loss Occurrence" means the sum of all individual losses arising out of and directly caused by any one disaster, accident or loss or series of disasters, accidents or losses arising out of one event which occurs anywhere within the Coverage Territory. The duration and extent of any one Loss Occurrence will be limited to all individual losses sustained by the Insured occurring during any period of 72 consecutive hours arising out of and directly caused by the same event, except:
  - A. As regards Windstorm (including Tier 1 Counties), Flood, Hail or Tornado, including ensuing collapse, Flood and Water Damage: all individual losses sustained by the Insured occurring during any period of 96 consecutive hours arising out of and directly caused by the same event.
  - B. As regards the perils of riot, strike or civil commotion, vandalism and malicious mischief, including losses from all other perils covered hereunder following as a result of the aforesaid perils: all losses or series of losses occurring during any period of 72 consecutive hours arising out of and directly caused by the same event. The maximum duration of 72 consecutive hours may be extended in respect of individual losses which occur beyond such 72 consecutive hours during the continued occupation of the Insured's premises by strikers, provided such occupation commenced during the aforesaid period.
  - C. As regards the peril of Earthquake, including losses from all other perils covered hereunder following as a result of Earthquake: only those individual losses covered hereunder, which commence during the period of 168 consecutive hours, may be included in the Loss Occurrence.
  - D. As regards the peril of freeze: only those individual losses directly caused by collapse, breakage of glass, water and/or liquid damage due to burst pipes tanks or pressure vessels; damage to machinery or equipment, stock and/or work in progress due to freeze; and/or individual losses arising directly out of the lack of supply of power, current, coolant and/or fuel due to frozen pipes and/or frozen feed lines may be included in the Loss Occurrence.

Except for those Loss Occurrences referred to in sub-paragraphs A. and B. above, the Insured may chose the date and time when such period of consecutive hours commences, provided that it is not earlier than the date and time of the occurrence of the first recorded individual loss sustained by the Insured arising out of that disaster, accident or loss and provided that only one such period of consecutive hours will apply with respect to one event.

However, as respects those Loss Occurrences referred to in sub-paragraphs A. and B. above, if the disaster, accident or loss occasioned by the event is of greater duration than the specified period of consecutive hours, then the Insured may divide that disaster, accident or loss into two or more Loss Occurrences, provided no two periods overlap and no individual loss is included in more than one such period and provided that no period commences earlier than the date and time of the occurrence of the first recorded individual loss sustained by the Insured arising from that disaster, accident or loss.

However, we shall not be liable hereunder for any loss or damage:

- a) Occurring before this policy becomes effective; or
- b) Arising from an "occurrence" which is in progress at the time this policy becomes effective, even if such loss or damage occurs after this policy becomes effective; or
- c) Occurring after the expiration of this policy, except loss or damage arising from an "occurrence" in progress at the time this policy expires.

This provision in no way alters any Policy Limit of Liability or Sub-limit of Liability.

All other terms and conditions remain unchanged.



**Westchester**

A Chubb Company

**ADDITIONAL POLICY CONDITIONS ENDORSEMENT**

Named Insured <b>Gulfside Casino Partnership, dba Island View Casino Resort, dba Windance Country Club</b>			Endorsement Number
Policy Symbol <b>FS</b>	Policy Number <b>D37406867 007</b>	Policy Period <b>05/01/2019 to 05/01/2020</b>	Effective Date of Endorsement
Issued By (Name of Insurance Company) <b>Westchester Surplus Lines Insurance Company</b>			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

As respects the participation of Westchester Surplus Lines Insurance Company (herein the "Company"), the following changes are hereby made to the Gulfside Casino Partnership Property Insurance Policy, including any endorsements thereto which are not Westchester Surplus Lines Insurance Company endorsements (herein "the coverage form"). It is understood and agreed that the following provisions supersede any term, condition, provision or endorsement found elsewhere in the coverage form that is in conflict herewith, and that the following provisions will apply notwithstanding any such contrary term, provision or endorsement.

**NAMED INSURED**

Any reference to an Insured, Named Insured or First Named Insured in this Policy shall mean the entity identified as the "Named Insured" in the header of this endorsement and any entity in which the Named Insured:

- owns an interest of more than 50 percent during the term of this Policy,
- controls during the term of this Policy, or
- has the responsibility of placing the insurance provided by this Policy during the term of this Policy.

No entity is covered under this Policy unless the Company has received identifying information for such entity during the application or submission process, except if such entity is covered under any extension of coverage for Miscellaneous Unnamed Insured Locations, Newly Acquired Property, or Automatic Coverage, or if such entity is added by endorsement.

**LENDERS AND MORTGAGEES**

The Lender Loss Payable clause, Mortgageholder clause, or any clause whereby a lender or mortgagee is granted rights and privileges under this Policy, if any, shall not apply to any lender or mortgagee unless such lender or mortgagee is identified by endorsement to this Policy prior to the date of loss.

**LAW IN FORCE AT TIME OF LOSS**

If the coverage form provides coverage for Demolition and Increased Cost of Construction, Ordinance or Law, or any other coverage for loss arising out of the enforcement of any law, this Policy shall only provide such coverage as respects a law, ordinance, or regulation that was in force at the time of loss.

**NO WAIVER**

Any Full Waiver clause, Waiver of Conditions clause, or any clause whereby the Company is deemed to waive, or whereby the coverage form purports to void or alter the force, effect or meaning of, the Company's forms or endorsements issued as part of this Policy is hereby deleted.

**NO AUTOMATIC REINSTATEMENT**

Any clause of the coverage form whereby the Policy shall be reinstated upon receipt of a premium payment after the effective date of cancellation is hereby deleted.





#### **REQUIREMENTS IN THE EVENT OF LOSS**

In addition to those requirements set forth elsewhere in this Policy, in the event of loss, the Insured will:

- A. give a signed and sworn proof of loss to the Company within 30 days after the loss on forms to be provided by the Company, unless that time is extended in writing by the Company. The proof of loss must state the knowledge and belief of the Insured as to:
  1. the time and origin of the loss.
  2. the Insured's interest and that of all others in the property.
  3. the Actual Cash Value and replacement value of each item and the amount of loss to each item; all encumbrances; and all other contracts of insurance, whether valid or not, covering any of the property.
  4. any changes in the title, use, occupation, location, possession, or exposures of the property since the effective date of this Policy.
  5. by whom and for what purpose any Insured Location was occupied on the date of loss, and whether or not it then stood on leased ground.
- B. As often as may be reasonably reequired, submit to examination under oath by any person designated by the Company, while not in the presence of any other Insured, about any matter relating to this insurance or the claim, and sign the written records of examinations.

#### **APPRAISAL**

If the Company and the Insured disagree on the value of the property or the amount of loss, within sixty (60) days after receipt of proof of loss by the Company, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will then select an umpire. If they cannot agree on an umpire after fifteen (15) days, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the Covered Property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will pay its chosen appraiser and its own costs and expenses; and bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, the Company will still retain its right to deny the claim.

#### **VALUATION - PERIOD OF TIME TO REPAIR, REBUILD OR REPLACE**

If the coverage form provides that the Company shall not be liable for more than the actual cash value of damaged property in the event that such property is not repaired, rebuilt or replaced, such provision of the coverage form is amended to provide as follows:

As respects any covered property valued by this Policy at the cost to repair, rebuild or replace, if lost or damaged property is not repaired, rebuilt or replaced within two (2) years after loss or damage, the Company shall not be liable for more than the actual cash value at the time of loss of the property damaged or destroyed.

#### **SUIT AGAINST THE COMPANY**

No suit, action, or proceeding for the recovery of any claim under this Policy will be sustainable in any court unless the Insured has fully complied with all the provisions of this Policy and legal action is started within twenty-four (24) consecutive calendar months after inception of the loss.

If, under the applicable insurance laws, such 24-month limitation is invalid, then any such legal action must be started within the shortest limit of time permitted by such laws.



**LOSS PAYABLE**

Loss, if any, will be adjusted with and payable to the First Named Insured or as may be directed by the First Named Insured. Additional insured interests will also be included in loss payment as their interest may appear when named as additional named insured, lender, mortgagee and/or loss payee in endorsements to this Policy.

**SUBROGATION**

The following condition is added to the subrogation clause of the coverage form or, if no such clause exists, is hereby added to the Policy:

In the event the Company initiates any subrogation proceedings arising from a loss payment made under this Policy, the Insured is required to cooperate in any such subrogation proceedings.

**ABANDONMENT**

There can be no abandonment of any property to the Company.

**LIBERALIZATION**

Any liberalization clause found in the coverage form, or any clause of the coverage form whereby the terms and conditions of this Policy are deemed automatically revised in conformity with any change in the coverage form, is hereby deleted.

All other terms and conditions remain unchanged.

**ELECTRONIC DATA AMENDMENT ENDORSEMENT**

Named Insured Gulfside Casino Partnership, dba Island View Casino Resort, dba Windance Country Club			Endorsement Number
Policy Symbol FS	Policy Number D37406867 007	Policy Period 05/01/2019 to 05/01/2020	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**BOILER AND MACHINERY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART**

The following terms and provisions are added to the Policy; supersede any term, provision or endorsement to the contrary in this Policy; and apply notwithstanding any such term, provision or endorsement in this Policy or in any underlying, contributing or followed policy:

1. This Policy excludes loss, damage, destruction, distortion, erasure, corruption, alteration, diminishment in value, or loss of use or usefulness of:
  - a. "Electronic Data" by any cause whatsoever (including but not limited to "Computer Virus");
  - b. "Electronic Data Processing Equipment" caused by or resulting from the loss, damage, destruction, distortion, erasure, corruption, alteration, diminishment in value, or loss of use or usefulness of "Electronic Data"; regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, destruction, distortion, erasure, corruption, alteration, diminishment in value, or loss of use or usefulness of "Electronic Data", "Electronic Data Processing Equipment", or "Electronic Media"; and/or
  - c. "Electronic Media" caused by or resulting from the loss, damage, destruction, distortion, erasure, corruption, alteration, diminishment in value, or loss of use or usefulness of "Electronic Data"; regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, destruction, distortion, erasure, corruption, alteration, diminishment in value, or loss of use or usefulness of "Electronic Data", "Electronic Data Processing Equipment", or "Electronic Media".

This exclusion does not apply to loss or damage to "Electronic Data", "Electronic Data Processing Equipment", and "Electronic Media" caused by or resulting from a "Named Peril", if and to the extent such Named Peril is already covered by this or by any underlying policy.

2. This Policy excludes loss, damage, cost or expense resulting from or arising out of any failure, malfunction, deficiency, deletion, fault, Computer Virus or corruption of computer code that results from or arises out of any authorized or unauthorized access by any means and for any purpose, whether intentional or inadvertent, in, of or to any "Electronic Data", "Electronic Data Processing Equipment", or "Electronic Media" and similar data, media, devices, and equipment in the ownership, possession, or control of a third party.

**Definitions**

1. "Electronic Data" means information, facts or "Computer Programs" stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hardware, computer memory, hard or floppy disks, zip drives, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment.

2. "Computer Programs" means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to send, receive, process, store, retrieve, erase, or destroy data, and "Electronic Data" which is integrated in and operates or controls the building's elevator, lighting, plumbing, electricity, heating, ventilation, air conditioning, security system, safety system, and fire protection system, but does not include prepackaged software held in storage.
3. "Electronic Data Processing Equipment" means "Computers", computer servers and similar equipment and component parts thereof, the purpose of which is to process Electronic Data.
4. "Electronic Media" means any physical device the purpose of which is to hold, store, contain or transfer "Electronic Data", and includes but is not limited to disks, drives, films, tapes, records, drums, or cells.
5. "Computers" includes but is not limited to mainframes, servers, workstations and portable computing devices, personal information managers, wide and local area network hardware, electronic and electromechanical equipment, data processing equipment, electronic controls for machinery, electronically programmed memory chips, and electronically controlled communication equipment.
6. "Computer Virus" means instructions, code, files, applications or any software program that has the ability or is suspected to have the ability to damage, destroy, erase, corrupt, alter, impede, or prevent access to "Electronic Data", "Electronic Media" or "Computers", or to disrupt or interfere with the operations of "Computers", or to disrupt or interfere with the operation of any software or the reliability of any "Electronic Data", including but not limited to malicious codes, malware, Trojan Horses, worms and time or logic bombs.
7. "Named Peril" means the perils of Fire; Lightning; Explosion; Windstorm or Hail; Smoke; Aircraft or Vehicles; Riot and Civil Commotion; Willful or malicious physical loss or damage by a means other than "Computer Virus" and/or an authorized or unauthorized access in, of or to any "Electronic Data", "Electronic Data Processing Equipment" and/or "Electronic Media"; Leakage from fire extinguishing equipment; Sinkhole Collapse; Volcanic Action; Building glass breakage; Falling Objects, Weight of snow, ice or sleet, Water Damage; Sonic Boom; Theft; Flood, Earthquake or Earth Movement.

All other terms and conditions remain unchanged.

**TERRORISM EXCLUSION ENDORSEMENT**

Named Insured Gulfside Casino Partnership, dba Island View Casino Resort, dba Windance Country Club			Endorsement Number
Policy Symbol FS	Policy Number D37406867 007	Policy Period 05/01/2019 to 05/01/2020	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**BOILER AND MACHINERY COVERAGE PART**  
**BUSINESS AUTO COVERAGE FORM**  
**GARAGE COVERAGE FORM**  
**MOTOR CARRIER COVERAGE FORM**  
**TRUCKERS COVERAGE FORM**  
**BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM**  
**COMMERCIAL INLAND MARINE COVERAGE PART**  
**COMMERCIAL PROPERTY COVERAGE FORM**  
**COMMERCIAL PROPERTY COVERAGE PART**  
**STANDARD PROPERTY POLICY**

The following exclusion is added to this policy and applies to all coverages, additional coverages, and coverage extensions, notwithstanding any provision to the contrary in this policy or any other endorsement hereto:

- A. This insurance does not cover loss, damage, injury, expense, cost, or legal obligation directly or indirectly caused by or resulting from any of the following, regardless of any other cause or event, whether or not insured under this policy, contributing concurrently or in any other sequence thereto:
1. "Act of Terrorism"; or
  2. Actions taken by or on behalf of any government or any branch or division thereof (including, without limitation, the uniformed armed forces, militia, police, state security, and anti-terrorism agencies) in responding to, preventing, combating, defending or retaliating against any "Act of Terrorism"; or
  3. dispersal, application, or release of any actual or alleged pathogen, poison, biologic or chemical product, material, waste or substance as a result of an Act of Terrorism, and it reasonably appears that one purpose of the Act of Terrorism was to release such product, material, waste or substance.

This exclusion applies whether or not the "Act of Terrorism" was committed in concert with or on behalf of any organization or government.

The terms and limitations of this exclusion do not serve to create coverage for any loss which would otherwise be excluded under this Policy, such as, but not limited to, losses excluded by the "Nuclear Exclusion" or the "War Exclusion" or similar provision.

B. As used in this endorsement:

1. "Act of Terrorism" means any act against persons, organizations or property of any nature that involves the following or preparation for the following:
  - a. Use or threat of force or violence; or
  - b. Commission or threat of a dangerous act; or
  - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and



2. Appears to be intended, in whole or in part, to:

- a. Intimidate or coerce a government or the civilian population; or
- b. Disrupt any segment of a nation's economy; or
- c. Influence the policy of a government by intimidation or coercion; or
- d. Affect the conduct of a government by mass destruction, assassination, kidnapping or hostage-taking; or
- e. Further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology; or
- f. Respond to governmental action or policy.

"Act of Terrorism" shall also include any incident determined to be such by an official, department or agency that has been specifically authorized by federal statute to make such a determination.

C. Exception Covering Certain Fire Losses

If an Act of Terrorism results in a fire and the direct physical loss or damage to property insured hereunder located in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands and any territory or possession of the United States, that, either pursuant to the Standard Fire Policy or otherwise, prohibits exclusions for acts of terrorism that result in fire, this Company will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage to property insured hereunder and may be limited, in accordance with the Standard Fire Policy, to the lesser of the actual cash value of the property at the time of the loss or the amount which it would cost to repair or replace the property, without allowance for any increased cost of repair or replacement by reason of any ordinance or law, and without any compensation for business interruption, extra expense to continue business activities, or any other coverage for loss or damage other than direct physical loss or damage to the property insured hereunder.

All other terms and conditions remain unchanged.



**SERVICE OF SUIT ENDORSEMENT**

Named Insured Gulfside Casino Partnership, dba Island View Casino Resort, dba Windance Country Club			Endorsement Number
Policy Symbol FS	Policy Number D37406867 007	Policy Period 05/01/2019 to 05/01/2020	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Information about service of suits upon the company is given below. Service of process of suits against the company may be made upon the following person, or another person the company may designate:

Mr. Paul Bech, Esq., Associate General Counsel  
Chubb  
436 Walnut Street  
Philadelphia, PA 19106-3703

The person named above is authorized and directed to accept service of process on the company's behalf in any action, suit or proceeding instituted against the company. If the insured requests, the company will give the insured a written promise that a general appearance will be entered on the company's behalf if a suit is brought.

If the insured requests, the company will submit to the jurisdiction of any court of competent jurisdiction. The company will accept the final decision of that court or any Appellate Court in the event of an appeal. However, nothing in this endorsement constitutes a waiver of the company's right to: remove an action to a United States District Court, seek a transfer of a case to another court, or to enforce policy provisions governing choice of law or venue selection, as may be permitted by the laws of the United States, or of any state in the United States.

The law of some jurisdictions of the United States of America requires that the Superintendent, Commissioner or Director of Insurance (or their successor in office) be designated as the company's agent for service of process. In these jurisdictions, the company designates the Director of Insurance as the company's true and lawful attorney upon whom service of process on the company's behalf may be made. The company also authorizes the Director of Insurance to mail process received on the company's behalf to the company person named above.

If the insured is a resident of Canada, the insured may also serve suit upon the company by serving the government official designated by the law of the insured's province.

NOTHING HEREIN CONTAINED SHALL BE HELD TO VARY, ALTER, WAIVE OR EXTEND ANY OF THE TERMS, CONDITIONS, OR LIMITATIONS OF THE POLICY TO WHICH THIS ENDORSEMENT IS ATTACHED OTHER THAN AS ABOVE STATED.

---

Authorized Representative

**CHUBB®**Westchester Surplus Lines Insurance Company  
Insurance CompanyGulfside Casino Partnership, dba Island View  
Casino Resort, dba Windance Country Club  
Policyholder

D37406867 007

Policy Number

AMWINS BROKERAGE OF GEORGIA LLC  
Broker/Producer**POLICYHOLDER DISCLOSURE  
NOTICE OF TERRORISM INSURANCE COVERAGE**

You were notified that under the Terrorism Risk Insurance Act, as amended, you have a right to purchase insurance coverage for losses resulting from acts of terrorism. *As defined in Section 102(1) of the Act.* The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury---in consultation with the Secretary of Homeland Security, and the Attorney General of the United States---to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

**YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY YOUR POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% FOR YEAR 2015, 84% BEGINNING ON JANUARY 1, 2016; 83% BEGINNING ON JANUARY 1, 2017, 82% BEGINNING ON JANUARY 1, 2018; 81% BEGINNING ON JANUARY 1, 2019 AND 80% BEGINNING ON JANUARY 1, 2020, OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM THAT WOULD BE CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.**

**YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.**

You elected **NOT** to purchase terrorism coverage under the Act at the price indicated. ACCORDINGLY, WE WILL **NOT** PROVIDE THIS COVERAGE AND YOU DO NOT OWE THE ADDITIONAL PREMIUM FOR THAT COVERAGE INDICATED BELOW.

Terrorism coverage described by the Act under your policy was made available to you for additional premium in the amount of \$40,827 , however you elected to decline such coverage.

**CERTIFICATES OF INSURANCE – AUTOMATIC ADDITIONAL INSURED AND LOSS PAYEE  
ENDORSEMENT**

Named Insured Gulfside Casino Partnership, dba Island View Casino Resort, dba Windance Country Club			Endorsement Number
Policy Symbol FS	Policy Number D37406867 007	Policy Period 05/01/2019 to 05/01/2020	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**COMMERCIAL PROPERTY COVERAGE PART**

**COMMERCIAL INLAND MARINE COVERAGE PART**

The following provisions are added to this policy and supersede and replace any conflicting provision in this Policy (including in any other endorsement hereto):

- A. Any Certificate of Insurance issued in connection with this Policy will be issued solely as a matter of convenience or information for the addressee(s) or holder(s) of said certificate. Certificates of Insurance do not amend, modify or alter any term or condition of this Policy.
- B. However, if, pursuant to a written agreement executed prior to a date of loss in question, the First Named Insured is required to add a person or entity to this Policy as an Additional Insured and Loss Payee, then this Policy will be deemed to have been endorsed accordingly, subject to all other terms, conditions, limits of liability and exclusions of this Policy. Loss to Covered Property in which such Additional Insured and Loss Payee has an interest will be adjusted with the First Named Insured and payable jointly to the First Named Insured and such Additional Insured and Loss Payee. No written endorsement to this Policy will be required in order for this provision to be effective as to such person or entity subject to compliance with sub-paragraph E. below.
- C. Within ten (10) business days after the Company is notified of a loss which may be covered under this Policy, the First Named Insured or its authorized representative will provide the Company with the identities of all persons or entities with interests in the property that is subject to the loss as well as copies of the agreement requiring such person or entity be added to this Policy as an Additional Insured or Loss Payee. If the First Named Insured requires additional time to comply with this paragraph, the Company will provide extensions of time that are reasonable and appropriate for the circumstances, however, all such requests for extensions must be made in writing to the Company.
- D. If the First Named Insured does not provide the Company with the information required in paragraph C above, the Company will assume that there are no such persons or entities and the Company will not be liable for any failure to take such person or entity's interest into account in the adjustment or payment of any loss.
- E. This endorsement does not apply to persons or entities added by endorsement under the applicable Lenders Loss Payee and Mortgage Interests and Obligations provisions of this Policy. Persons or entities added as Additional Insured and Loss Payee pursuant to this endorsement do not have the same rights and obligations as the First Named Insured or Lenders Loss Payee and Mortgage Interests.

All other terms and conditions remain unchanged.

CHUBB®

**Chubb Producer Compensation  
Practices & Policies**

Chubb believes that policyholders should have access to information about Chubb's practices and policies related to the payment of compensation to brokers and independent agents. You can obtain that information by accessing our website at <http://www.chubbproducercompensation.com> or by calling the following toll-free telephone number: 1-866-512-2862.

**TRADE OR ECONOMIC SANCTIONS ENDORSEMENT**

Named Insured Gulfside Casino Partnership, dba Island View Casino Resort, dba Windance Country Club			Endorsement Number
Policy Symbol FS	Policy Number D37406867 007	Policy Period 05/01/2019 to 05/01/2020	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, but not limited to, the payment of claims. All other terms and conditions of policy remain unchanged.

---

 Authorized Agent

IL P 001 01 04

## **U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS**

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.



**CHUBB®**

## Claims Directory

### Property and Inland Marine

Claims or Loss Notices related to this policy should be reported to the following:

Claim Office	Email and Fax	Location
Chubb North American Claims	<p>First Notices Email:  <a href="mailto:ChubbClaimsFirstNotice@Chubb.com">ChubbClaimsFirstNotice@Chubb.com</a></p> <p>First Notices Fax:            (877)-395-0131 (Toll Free)            (302)-476-7254 (Local)</p> <p>Phone:            (800)-433-0385 - Business Hours            (800)-523-9254 – After Hours</p>	P.O. Box 5122 Scranton, PA 18505-0554

**SIGNATURES**

Named Insured Gulfside Casino Partnership, dba Island View Casino Resort, dba Windance Country Club			Endorsement Number
Policy Symbol FS	Policy Number D37406867 007	Policy Period 05/01/2019 to 05/01/2020	Effective Date of Endorsement
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.


THE ONLY SIGNATURES APPLICABLE TO THIS POLICY ARE THOSE REPRESENTING THE COMPANY NAMED ON THE FIRST PAGE OF THE DECLARATIONS.

By signing and delivering the policy to you, we state that it is a valid contract.

**ILLINOIS UNION INSURANCE COMPANY** (A stock company)  
525 W. Monroe Street, Suite 400, Chicago, Illinois 60661

**WESTCHESTER SURPLUS LINES INSURANCE COMPANY** (A stock company)  
Royal Centre Two, 11575 Great Oaks Way, Suite 200, Alpharetta, GA 30022

  
REBECCA L. COLLINS, Secretary

  
JOHN J. LUPICA, President

\_\_\_\_\_  
Authorized Representative

Chubb. Insured.™

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

GULFSIDE CASINO PARTNERSHIP

PLAINTIFF

VS.

CASE NO. A2401-2020-460

WESTCHESTER SURPLUS LINES INSURANCE  
COMPANY

DEFENDANT

*Alias*

SUMMONS

STATE OF MISSISSIPPI

TO: Westchester Surplus Lines Insurance Company  
by and through it designated person,  
Mr. Paul Bech, Associate General Counsel  
Chubb  
436 Walnut Street  
Philadelphia, PA 19106-3703

NOTICE TO DEFENDANT

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND  
YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand deliver a copy of a written response to the  
Complaint to Joe Sam Owen, the attorney for the Plaintiff, whose mailing address is Post  
Office Drawer 420, Gulfport, Mississippi, 39502, and whose physical address is 1414 25th  
Avenue, Gulfport, Mississippi 39501. Your responses must be mailed or delivered within  
thirty (30) days from the date of delivery of this Summons and Complaint or a judgment  
of default will be entered against you for the money or other things demanded in the  
Complaint.

You must also file the original of your response with the Clerk of this Court within  
a reasonable time afterward.

ISSUED UNDER MY HAND AND SEAL, this 18 day of October, 2020.

CLERK OF CIRCUIT COURT  
HARRISON COUNTY, MISSISSIPPI

BY:

DEPUTY CLERK

CONNIE LADNER, CIRCUIT CLERK

Case: 24CI1:20-cv-00460 Document #: 4

Filed: 10/01/2020

Page 1 of 2

PO BOX 998  
GULFPORT, MS 39502



**PROOF OF SERVICE - SUMMONS**

Name of Person or Entity Served: WESTCHESTER SURPLUS LINES INSURANCE COMPANY

I, the undersigned process server, served the Summons and Complaint upon the person or entity named above in the manner set forth below (process server must check proper space and provide all additional information that is requested and pertinent to the mode of service used):

\_\_\_\_\_ FIRST CLASS MAIL AND ACKNOWLEDGMENT SERVICE. By mailing (first class mail, postage prepaid) copies to the person served, together with copies of the form of notice and acknowledgment and return envelope, postage prepaid, addressed to the sender (Attach complete acknowledgment of receipt pursuant to MRCP Form 1B).

\_\_\_\_\_ PERSONAL SERVICE. I personally delivered copies to \_\_\_\_\_ (title) of \_\_\_\_\_, registered agent for service of process for Westchester Surplus Insurance Company on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, where I found said person in \_\_\_\_\_ County of the State of \_\_\_\_\_.

\_\_\_\_\_ RESIDENCE SERVICE. After exercising reasonable diligence I was unable to deliver copies to said person within \_\_\_\_\_ County (state). I served this summons and Motion on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, at the usual place of abode of said person by leaving a true copy of the Summons and Motion with \_\_\_\_\_ (here insert wife, husband, son, daughter or other person as the case may be), a member of the family of the person served above the age of sixteen years and willing to receive the Summons and Motion, and thereafter on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, I mailed (by first class mail, postage prepaid) copies to the person served at his or her usual place abode where the copies were left.

\_\_\_\_\_ CERTIFIED MAIL SERVICE. By mailing to an address outside Mississippi (by first class, mail, postage prepaid, requiring a return receipt) copies to the person served. (Attach signed return receipt or other evidence of actual delivery to the person served.)

At the time of service I was at least 18 years of age and not a party to this action.

Fee for service: \$ \_\_\_\_\_

Process server must list below: {Please print or type}

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Personally appeared before me the undersigned authority in and for the state and county aforesaid, the with named \_\_\_\_\_ who being first by me duly sworn states on oath that the matters and facts set forth in the foregoing "Proof of Service-Summons" are true and correct as therein stated.

\_\_\_\_\_  
Process Server (Signature)

Sworn to and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
NOTARY PUBLIC

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

GULFSIDE CASINO PARTNERSHIP

PLAINTIFF

VS.

CASE NO. A2401-2020-460

WESTCHESTER SURPLUS LINES INSURANCE  
COMPANY

DEFENDANT

---

MOTION FOR ADMISSION OF COUNSEL *PRO HAC VICE*

---

The undersigned JOE SAM OWEN, files this Motion to Admit Kenneth P. "Casey" Castleberry to appear *pro hac vice* as additional counsel for the Plaintiff, Gulfside Casino Partnership in the above styled and numbered cause, and would show unto this Honorable Court the following:

1. Kenneth P. "Casey" Castleberry is a duly licensed attorney and member of the Bar listed on the attached Affidavit.
2. Kenneth P. "Casey" Castleberry has read and has good knowledge of the local rules of this Court. Kenneth P. "Casey" Castleberry is of good moral character and familiar with the ethics, principles, practices, customs and usages of the legal profession in this state, and no disciplinary proceedings or criminal charges have been instituted against him as is evidenced by Kenneth P. "Casey" Castleberry's Certificate of Good Standing and Affidavit which is attached hereto as Exhibit "A".

3. The undersigned certifies that he is in agreement with association in the above-styled and numbered cause of action.

4. The undersigned has paid the requisite fees as set forth in Miss. Code Ann. § 25-7-3 and Miss. R. App. P. 46(b).

**WHEREFORE, PREMISES CONSIDERED,** the undersigned respectfully requests that this Court enter an Order of Admission *pro hac vice* for Kenneth P. "Casey" Castleberry to appear *pro hac vice* as additional counsel for the Plaintiff, Gulfside Casino Partnership, in the above styled cause.

Respectfully submitted this the 5<sup>th</sup> day of October, 2020.

/s/ JOE SAM OWEN, MS Bar No. 3965  
ATTORNEY FOR PLAINTIFF

Joe Sam Owen, MS Bar No. 3965  
OWEN and OWEN, PLLC  
P.O. Box 420  
[1414 25th Avenue]  
Gulfport, MS 39501  
Telephone: 228-868-2821  
Facsimile: 228-864-6421  
E-mail: jso@owen-owen.com



CERTIFICATE OF SERVICE

I, JOE SAM OWEN, of the law firm of Owen and Owen, P.L.L.C., do hereby certify that I have this day filed the above and foregoing with the Clerk of the MOTION FOR ADMISSION OF COUNSEL *PRO HAC VICE* Court using the MEC System which sent notification of such filing to all counsel of record.

SO CERTIFIED THIS THE 5<sup>th</sup> day of October, 2020.

/S/ JOE SAM OWEN

JOE SAM OWEN (Bar No. 3965)  
OWEN and OWEN, P.L.L.C.  
1414 25<sup>TH</sup> AVENUE  
OWEN BUILDING  
POST OFFICE DRAWER 420  
GULFPORT, MS 39502-0420  
TEL: (228) 868-2821  
FAX: (228) 864-6421

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

GULFSIDE CASINO PARTNERSHIP

PLAINTIFF

VS.

CASE NO. A2401-2020-460

WESTCHESTER SURPLUS LINES INSURANCE  
COMPANY

DEFENDANT

---

AFFIDAVIT OF KENNETH P. "CASEY" CASTLEBERRY

---

PERSONALLY APPEARED BEFORE ME, the undersigned authority, the within named KENNETH P. "CASEY" CASTLEBERRY, who, after being duly sworn on oath, stated as follows:

1. I am of the full age of majority and not laboring under any disabilities.
2. I seek to appear as counsel pro hac vice before the Harrison County Circuit Court, First Judicial District in the matter styled *Gulfside Casino Partnership v. Westchester Surplus Lines Insurance Company, Cause No A2401-2020-460*.
3. My residence address is 910 East Main Street, Batesville, Arkansas 72501.
4. I am a partner in the law firm of Murphy, Thompson, Arnold, Skinner & Castleberry, Post Office Box 2595, 555 East Main Street, Suite 200, Batesville, Arkansas, 72501, telephone number (870)793-3821, facsimile number (870)793-3815 and email address casey@castleberrylawfirm.com.
5. I do not maintain an office within the state of Mississippi and have not been engaged in the general practice of law in this state without being properly admitted and licensed to practice law in the state of Mississippi.



6. I have been a member in good standing of the State Bar of Arkansas since 2003. I am also a member in good standing of the United States District Court for the Eastern and Western Districts of Arkansas and the United States Court of Appeals for the Eighth Circuit.

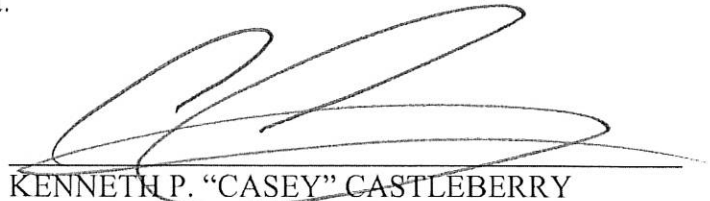
7. I am not currently, nor have I ever been suspended or disbarred by any jurisdiction. I have not been the subject of disciplinary action by the Bar or courts of any jurisdiction. I am admitted to practice before the Supreme Court of the State of Arkansas, as evidenced by the Certificate of Good Standing attached hereto as Exhibit "1."

8. Unless permitted to withdraw by order of the Court, I will continue to represent my client in the above-mentioned case until a final determination of the case. I will consent to the jurisdiction of the Harrison County Circuit Court and to the disciplinary tribunals of the Mississippi Board of Bar Admissions in all respects as if I were a regularly admitted and licensed member of the Mississippi Bar Association.

9. I have not requested, been admitted to nor applied for admission *pro hac vice* within the state of Mississippi for the twelve (12) months immediately preceding this application.

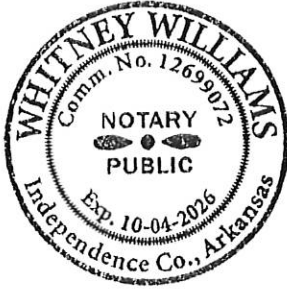
10. I am associated with Joe Sam Owen of the law firm of Owen and Owen, P.L.L.C., Post Office Drawer 420, Gulfport, Mississippi 39502-0420, who is a member in good standing of the Mississippi State Bar.

11. Further, affiant sayeth naught.



KENNETH P. "CASEY" CASTLEBERRY

SWORN TO AND SUBSCRIBED BEFORE ME, this the 30<sup>th</sup> day of September,  
2020.



Whitney Williams  
NOTARY PUBLIC

*Supreme Court*

***State of Arkansas***

*Little Rock*

**CERTIFICATE OF GOOD STANDING**

State of Arkansas

in the Supreme Court

I, Stacey Pectol, Clerk of the Supreme Court of Arkansas, do hereby certify that Kenneth P. Castleberry was enrolled as an Attorney at Law and Solicitor in Chancery by the Supreme Court of this State on September 5, 2003; that no disbarment proceedings have been filed against him in this court, that he has not had any adverse disciplinary action whatsoever during the past three year period, and that his private and professional character appear to be good.

In Testimony Whereof, I hereunto  
set my hand as Clerk and affix the seal of Said Court  
this the 29th day of September, 2020.

\_\_\_\_\_  
STACEY PECTOL  
(CLERK SUPREME COURT OF ARKANSAS)

By Naomi Bullard  
Deputy Clerk





**Supreme Court of Mississippi**  
**Court of Appeals of the State of Mississippi**  
*Office of the Clerk*

D. Jeremy Whitmire  
Post Office Box 249  
Jackson, Mississippi 39205-0249  
Telephone: (601) 359-3694  
Facsimile: (601) 359-2407

(Street Address)  
450 High Street  
Jackson, Mississippi 39201-1082

e-mail: [sctclerk@courts.ms.gov](mailto:sctclerk@courts.ms.gov)

October 13, 2020

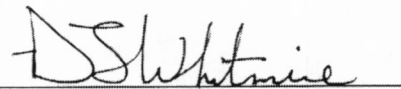
RE: Kenneth P. Castleberry  
Gulfside Casino Partnership v. Westchester Surplus Lines Insurance Company  
SC #: 2020-AC-01133; Trial Court #: A2401-2020-460  
Harrison County Circuit Court District 1

**CLERK'S PRO HAC VICE STATEMENT**

Attached hereto is a record indicating all causes or other matters which have been reported to the Office of the Clerk of the Supreme Court in which the specified foreign attorney previously requested to appear as counsel pro hac vice and the date and disposition of each request.

Pursuant to Mississippi Rules of Appellate Procedure, Rule 46 (b) (7) provides that upon entry of an order by the trial court judge it is the responsibility of the foreign attorney to provide this office with a copy of the order.

Effective May 27, 2004, by order of the Court, M.R.A.P. 46 (b)(5) was amended to place the responsibility of obtaining, filing and serving the statement of the Clerk of the Supreme Court upon the foreign attorney seeking leave to appear pro hac vice. The foreign attorney shall file a copy of the Statement and Pro Hac Vice Report on the trial court clerk, the trial court judge, local counsel and attorneys of record. The Clerk of the Supreme Court will provide one copy to the foreign attorney.



CLERK





## Pro Hac Vice Report

Date Run:10/13/2020

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**Tracking #** 995512      **Name:** Kenneth P. Castleberry  
**Cases Attached To:**

---

2020-AC-01133      Harrison County Circuit Court District 1      Lawrence Paul Bourgeois Jr.  
Gulfside Casino Partnership v. Westchester Surplus Lines Insurance      **Local Atty:** Joe Sam Owen  
**Application Filed:** 10/13/2020      **Clerk's Notice Issued:**10/13/2020      **Delinquency Issued:** 10/13/2020  
**Trial Court Order Recvd:**

---

**Total: 1**

**Supreme Court of Mississippi**  
**Court of Appeals of the State of Mississippi**  
*Office of the Clerk*

D. Jeremy Whitmire  
Post Office Box 249  
Jackson, Mississippi 39205-0249  
Telephone: (601) 359-3694  
Facsimile: (601) 359-2407

*(Street Address)*  
450 High Street  
Jackson, Mississippi 39201-1082  
  
e-mail: [sctclerk@courts.ms.gov](mailto:sctclerk@courts.ms.gov)

October 13, 2020

RE: Kenneth P. Castleberry  
Gulfside Casino Partnership v. Westchester Surplus Lines Insurance Company  
SC Cause #: 2020-AC-01133 ; Trial Court Cause #: A2401-2020-460  
Harrison County Circuit Court District 1

**NOTICE**

Pursuant to Mississippi Rules of Appellate Procedure 46 (b), this office is in receipt of the verified application. This application is deficient as checked below:

XXX Certification of the \$300 fee payable to the Mississippi Bar was not made.

\_\_\_\_\_ The miscellaneous docket fee of \$50.00, as provided in Miss. Code Ann. § 25-7-3, was not paid to the Supreme Court Clerk.

\_\_\_\_\_ The name of the Trial Court was omitted.

\_\_\_\_\_ The foreign attorney's \_\_\_\_\_ residence address, \_\_\_\_\_ office address, and/or \_\_\_\_\_ office and facsimile telephone numbers was omitted.

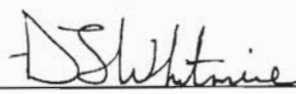
\_\_\_\_\_ The name and office address of the member or members in good standing of the Mississippi Bar whom the foreign attorney has associated in the particular cause; and

\_\_\_\_\_ The verified application of the foreign attorney for appearance pro hac vice shall also be signed by the associated local attorney, certifying the local attorney's agreement to be associated by the foreign attorney in the particular cause.

\_\_\_\_\_ A copy of the verified application shall also be served by mail upon all parties who have previously appeared in the cause and shall contain a certification of such service.

Please correct the deficiency within 7 days  
date of notice.

from the

  
CLERK

**FILED**  
  
CONNIE LADNER  
CIRCUIT CLERK  
BY: 

cc: Associated Local Counsel

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

GULFSIDE CASINO PARTNERSHIP

PLAINTIFF

VS.

CASE NO. A2401-2020-460

WESTCHESTER SURPLUS LINES INSURANCE  
COMPANY

DEFENDANT

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ORDER GRANTING ADMISSION OF COUNSEL *PRO HAC VICE*

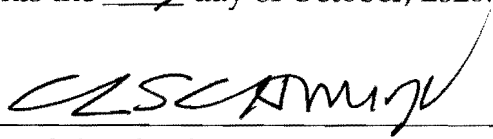
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This cause having come before the Court on the Motion to Allow Admission of Counsel *Pro Hac Vice* of Kenneth P. "Casey" Castleberry to appear *pro hac vice* as additional counsel for the Plaintiff, Gulfside Casino Partnership, in the above styled and numbered cause. The proper fees have been paid to the Mississippi Supreme Court and the Mississippi Bar in accord with Miss. R. App. P. 46(b)(7), and the Court having reviewed same and otherwise being duly advised in the premises finds the Motion is well taken and should be granted. It is therefore,

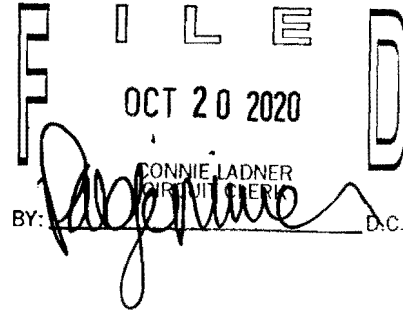
**ORDERED and ADJUDGED** that Kenneth P. "Casey" Castleberry may appear *pro hac vice* as additional counsel for the Plaintiff, Gulfside Casino Partnership, in the

above styled and numbered cause.

SO ORDERED and ADJUDGED this the 20<sup>th</sup> day of October, 2020.

  
\_\_\_\_\_  
CIRCUIT COURT JUDGE

JOE SAM OWEN (Bar No. 3965)  
OWEN and OWEN, P.L.L.C.  
POST OFFICE DRAWER 420  
GULFPORT, MS 39502-0420  
TEL: (228) 868-2821  
FAX: (228) 868-2813  
Email: [jso@owen-owen.com](mailto:jso@owen-owen.com)



IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

GULFSIDE CASINO PARTNERSHIP

PLAINTIFF

VS.

CASE NO. A2401-2020-460

WESTCHESTER SURPLUS LINES INSURANCE  
COMPANY

DEFENDANT

ALIAS SUMMONS

STATE OF MISSISSIPPI

TO: Westchester Surplus Lines Insurance Company  
by and through its Attorney,  
Jim Bauer (james.bauer@clydesco.us)  
271 17<sup>th</sup> Street NW, Ste. 1720  
Atlanta, GA 30363

NOTICE TO DEFENDANT

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND  
YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand deliver a copy of a written response to the Complaint to Joe Sam Owen, the attorney for the Plaintiff, whose mailing address is Post Office Drawer 420, Gulfport, Mississippi, 39502, and whose physical address is 1414 25th Avenue, Gulfport, Mississippi 39501. Your responses must be mailed or delivered within thirty (30) days from the date of delivery of this Summons and Complaint or a judgment of default will be entered against you for the money or other things demanded in the Complaint.

You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

ISSUED UNDER MY HAND AND SEAL, this 21 day of October, 2020.

CONNIE LADNER, CIRCUIT CLERK  
HARRISON COUNTY  
PO BOX 998  
GULFPORT, MS 39502

CLERK OF CIRCUIT COURT  
HARRISON COUNTY, MISSISSIPPI

BY:

DEPUTY CLERK





**PROOF OF SERVICE - SUMMONS**

Name of Person or Entity Served: WESTCHESTER SURPLUS LINES INSURANCE COMPANY

I, the undersigned process server, served the Summons and Complaint upon the person or entity named above in the manner set forth below (process server must check proper space and provide all additional information that is requested and pertinent to the mode of service used):

\_\_\_\_\_ FIRST CLASS MAIL AND ACKNOWLEDGMENT SERVICE. By mailing (first class mail, postage prepaid) copies to the person served, together with copies of the form of notice and acknowledgment and return envelope, postage prepaid, addressed to the sender (Attach complete acknowledgment of receipt pursuant to MRCP Form 1B).

\_\_\_\_\_ PERSONAL SERVICE. I personally delivered copies to \_\_\_\_\_, \_\_\_\_\_ (title) of \_\_\_\_\_, registered agent for service of process for Westchester Surplus Insurance Company on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, where I found said person in \_\_\_\_\_ County of the State of \_\_\_\_\_.

\_\_\_\_\_ RESIDENCE SERVICE. After exercising reasonable diligence I was unable to deliver copies to said person within \_\_\_\_\_ County (state). I served this summons and Motion on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, at the usual place of abode of said person by leaving a true copy of the Summons and Motion with \_\_\_\_\_ (here insert wife, husband, son, daughter or other person as the case may be), a member of the family of the person served above the age of sixteen years and willing to receive the Summons and Motion, and thereafter on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, I mailed (by first class mail, postage prepaid) copies to the person served at his or her usual place abode where the copies were left.

\_\_\_\_\_ CERTIFIED MAIL SERVICE. By mailing to an address outside Mississippi (by first class, mail, postage prepaid, requiring a return receipt) copies to the person served. (Attach signed return receipt or other evidence of actual delivery to the person served.)

At the time of service I was at least 18 years of age and not a party to this action.

Fee for service: \$ \_\_\_\_\_

Process server must list below: {Please print or type}

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Personally appeared before me the undersigned authority in and for the state and county aforesaid, the with named \_\_\_\_\_ who being first by me duly sworn states on oath that the matters and facts set forth in the foregoing "Proof of Service-Summons" are true and correct as therein stated.

\_\_\_\_\_  
Process Server (Signature)

Sworn to and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
NOTARY PUBLIC

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

GULFSIDE CASINO PARTNERSHIP

PLAINTIFF

VS.

CASE NO. A2401-2020-460

WESTCHESTER SURPLUS LINES INSURANCE  
COMPANY

DEFENDANT

ALIAS SUMMONS

STATE OF MISSISSIPPI

TO: Westchester Surplus Lines Insurance Company  
by and through its Attorney,  
Jim Bauer (james.bauer@clydesco.us)  
271 17<sup>th</sup> Street NW, Ste. 1720  
Atlanta, GA 30363

NOTICE TO DEFENDANT

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND  
YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand deliver a copy of a written response to the Complaint to Joe Sam Owen, the attorney for the Plaintiff, whose mailing address is Post Office Drawer 420, Gulfport, Mississippi, 39502, and whose physical address is 1414 25th Avenue, Gulfport, Mississippi 39501. Your responses must be mailed or delivered within thirty (30) days from the date of delivery of this Summons and Complaint or a judgment of default will be entered against you for the money or other things demanded in the Complaint.

You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

ISSUED UNDER MY HAND AND SEAL, this 21 day of October, 2020.

CONNIE LADNER, CIRCUIT CLERK  
HARRISON COUNTY  
PO BOX 998  
GULFPORT, MS 39502

CLERK OF CIRCUIT COURT  
HARRISON COUNTY, MISSISSIPPI

BY:   
DEPUTY CLERK



Case: 24CI1:20-cv-00460 Document #: 9 Filed: 10/21/2020 Page 1 of 2

## PROOF OF SERVICE - SUMMONS

Name of Person or Entity Served: WESTCHESTER SURPLUS LINES INSURANCE COMPANY

I, the undersigned process server, served the Summons and Complaint upon the person or entity named above in the manner set forth below (process server must check proper space and provide all additional information that is requested and pertinent to the mode of service used):

\_\_\_\_\_ FIRST CLASS MAIL AND ACKNOWLEDGMENT SERVICE. By mailing (first class mail, postage prepaid) copies to the person served, together with copies of the form of notice and acknowledgment and return envelope, postage prepaid, addressed to the sender (Attach complete acknowledgment of receipt pursuant to MRCP Form 1B).

X PERSONAL SERVICE. I personally delivered copies to James Bauer, Attorney for Westchester Surplus Insurance Co. (title) of \_\_\_\_\_, ~~registered agent for service of process for Westchester Surplus Insurance Company~~ on the 22nd day of October, 2020, where I found said person in \_\_\_\_\_ County of the State of \_\_\_\_\_. This service was by agreement with Mr. Bauer.

\_\_\_\_\_ RESIDENCE SERVICE. After exercising reasonable diligence I was unable to deliver copies to said person within \_\_\_\_\_ County (state). I served this summons and Motion on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, at the usual place of abode of said person by leaving a true copy of the Summons and Motion with \_\_\_\_\_ (here insert wife, husband, son, daughter or other person as the case may be), a member of the family of the person served above the age of sixteen years and willing to receive the Summons and Motion, and thereafter on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, I mailed (by first class mail, postage prepaid) copies to the person served at his or her usual place abode where the copies were left.

\_\_\_\_\_ CERTIFIED MAIL SERVICE. By mailing to an address outside Mississippi (by first class, mail, postage prepaid, requiring a return receipt) copies to the person served. (Attach signed return receipt or other evidence of actual delivery to the person served.)

At the time of service I was at least 18 years of age and not a party to this action.

Fee for service: \$ -0-

Process server must list below: (Please print or type)

Name: Cynthia S. Foster

Address: Post Office Drawer 420, Gulfport, MS 39501

Telephone No.: 228/868-2821

STATE OF Mississippi  
COUNTY OF Harrison

Personally appeared before me the undersigned authority in and for the state and county aforesaid, the with named \_\_\_\_\_ who being first by me duly sworn states on oath that the matters and facts set forth in the foregoing "Proof of Service-Summons" are true and correct as therein stated.

Cynthia S. Foster  
Process Server (Signature)

Sworn to and subscribed before me this 23rd day of October, 2020.

Katie Buchanan  
NOTARY PUBLIC

